

























A Documentary History of  
American Industrial  
Society

Volume IV





# A Documentary History of American Industrial Society

Edited by John R. Commons  
Ulrich B. Phillips, Eugene A. Gilmore  
Helen L. Sumner, and John B. Andrews

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Volume IV  
Labor Conspiracy Cases

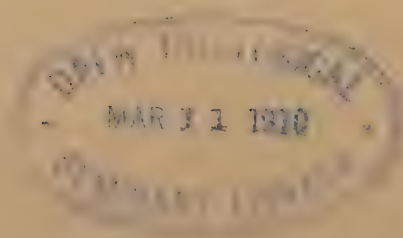


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# LABOR CONSPIRACY CASES

1806-1842

Selected, Collated, and Edited by

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Volume II





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I. PITTSBURG CORDWAINERS, 1815  
COMMONWEALTH V. MORROW

[Title page] REPORT OF THE TRIAL OF THE JOURNEYMEN CORDWAINERS, OF THE BOROUGH OF PITTSBURGH: Had at an Adjourned Court of Quarter Sessions for the County of Allegheny, Holden at Pittsburgh the First Monday of December 1815. Taken by Charles Shaler, Esq. Pittsburgh, Published by Cramer, Spear & Eichbaum, Franklin Bookstore. Robert Ferguson & Co. printers, 1816.

[3] DEDICATION

To the Manufacturers and Mechanics of the Borough of Pittsburgh, This Trial, Involving Principles essential to their interests, is humbly inscribed, By  
their Obedient Servant, CHARLES SHALER.  
Pittsburg, Dec. 10, 1815.

## [5] PREFACE

It was not until this case had considerably progressed, that it was perceived by the Reporter, that its importance would render it acceptable to the Public; and perhaps he would not even under such impressions, have undertaken to report it, but for the pressing solicitations of many respectable Mechanics and Manufacturers of the borough of Pittsburgh. Whatever correctness may be found in this report is attributable entirely to the condescension of the President of the Court, and the politeness of the eminent council employed, who have favoured me with their notes, and given every assistance consistent with their constant and assiduous professional duties. If any improprieties may be found in this report of the case, they must be attributed entirely to the Reporter, and in truth he owes an apology to the profession, and to the public, for attempting to give this case to the latter, through the medium of the press, from notes taken in short hand, as was the original intention. To those who are accustomed to take notes in the common way, it is unnecessary to state how impracticable it is, to follow eloquent advocates in their higher and sublime flights of the imagination, or in their impassioned and enthusiastic addresses to the feelings. Assisted by my own notes and those of the gentlemen employed, (inferior to none in the union, for their admirable talents and professional skill;) I have endeavoured to give a brief of those arguments, which were enforced with unrivalled ingenuity on the minds of the jury. The verdict of that jury is most important to the manufacturing interests of the community; it puts an end to those associations which have been so prejudicial to the successful enterprize of the capitalists of the western county. But this case is not important to this



country alone; it proves beyond the possibility of doubt, that notwithstanding the adjudications in New York and Philadelphia, there still exists in those cities, combinations which extend their deleterious influence to every part of the union. The inhabitants of those cities, the manufacturers particularly, are bound by their interests, as well as the duties they owe community, to watch those combinations with a jealous eye, and to prosecute to conviction, and subject to the penalties of the law, conspiracies so subversive to the best interests of their country.

[7] At an adjourned court of General Quarter Sessions of the peace for the county of Allegheny, holden at Pittsburgh the first Monday in December, in the year of our Lord, one thousand eight hundred and fifteen.

PRESENT. The Hon. Samuel Roberts, *president*; Francis M'Clure, George Robinson, *associates*. Commonwealth *vs.* George Morrow, *et al.*

JURORS *sworn*. John King, James Cabbage, Thomas Douglas, Wm. Dawson, Aaron Applegate, Daniel Curry, David Boggs, Stewart Jordan, Jeffery Scaife, Joshua Armitage, Wm. Sluey, Richard Gray.

COUNSEL FOR THE PROSECUTION. Samuel Douglas, Esq., *attorney general*; Henry Baldwin, Esq.; William Wilkins, Esq.

COUNSEL FOR THE DEFENDANTS. Walter Forward, Esq.; Parker Campbell, Esq.

Mr. Douglas opened the prosecution in the following terms: May it please the court, the object of the present prosecution, gentlemen of the jury, is to suppress a conspiracy, whose tendency must be peculiarly prejudicial to the interests of this borough and the whole western country. For it is well known that the prosperity

of both greatly depends upon their manufacturies. To a subject, then gentlemen, so deeply involving the interests and welfare of a community of which you are members, you would naturally attend; but to the offence charged in this indictment both duty and interest unite with me in soliciting your most serious consideration. Permit me to read the charges which it contains.

#### [8] ENDICTMENT

Allegheny County, ss. The grand inquest of the commonwealth of Pennsylvania, in and for the body of the county of Allegheny, on their solemn oaths and affirmations respectively do present, that Thomas Macky, George Morrow, Kendal Webb, Edward Hughes, John Hood, Christian Mindeher, George Burns, John Barnsides, David Cassedy, John Smith, William Meloney, Samuel Beler, James Davis, Hugh Kees, Simon Glenn, James Rice, William Low, Francis Logan, Thomas Reed, John Ward,——Dobbins, and George M'Munn, late of said county, cordwainers, on the twenty-seventh day of October in the year of our Lord one thousand eight hundred and fifteen, at the borough of Pittsburg in the county of Allegheny aforesaid, and within the jurisdiction of this court, with force and arms (then and there being workmen and journeymen in the art, mystery, and occupation of cordwainers) did unlawfully, perniciously and deceitfully, designing and intending to form and unite themselves into an unlawful society and combination for the purpose of unjustly and iniquitously raising the price of their wages and the wages of all journeymen cordwainers in said borough, and of extorting from all persons who should employ them large sums of money, assemble and meet together; and being so assembled and met together, did then and there with like force and arms, un-

lawfully, unjustly and corruptly conspire, combine, confederate and agree together, that they the said conspirators would not work for any person who had in his employment any journeyman cordwainer who did not belong to their said society, and agree to conduct himself by such rules and regulations as they the said conspirators might from time to time adopt; that they would not do or perform any work as journeymen cordwainers aforesaid, for any person or persons whatsoever, unless for such wages as they or such pretended society might agree and fix upon; that they would not permit any journeyman cordwainer who was a member of such pretended society or association to work for any less wages than they the said conspirators or such pretended society might agree and fix upon; that they would not work in the shop or employment of any master shoemaker who had in his shop or employment any journeyman cordwainer who was not a member of such pretended society or conspiracy, or who had been expelled therefrom for any violation of the unlawful rules, by-laws [9] or regulations of the said confederates or such pretended or unlawful society. And in pursuance and furtherance of such confederacy, conspiracy and agreement, the aforesaid conspirators did wholly refuse to work as cordwainers aforesaid, and did wholly absent and withdraw themselves from the employments of many master cordwainers aforesaid, in the said borough, to the great injury, damage and oppression of the good people of said borough, and of the master cordwainers employing them in said art, and divers other workmen in the said art, to the evil example of all persons in the like case offending, and against the peace and dignity of the commonwealth of Pennsylvania.

And the inquest aforesaid, on their oaths and affir-

mations aforesaid, do further present, that the aforesaid Thomas Macky [*et al.*], being workmen and journeymen in the art, mystery and occupation of cordwainers, on the twenty-seventh day of October, in the year of our Lord one thousand eight hundred and fifteen, at the borough of Pittsburg, in the county of Allegheny aforesaid, and within the jurisdiction of this court, falsely, fraudulently, maliciously, and oppressively intending, designing and conspiring to raise their wages, and the wages of all other journeymen cordwainers in said borough; and to extort large sums of money from the master cordwainers and other good citizens of the said borough, with force and arms, did unlawfully, unjustly, maliciously and oppressively, assemble and meet together, and being so assembled and met together, did with like force and arms and in like manner combine, conspire, confederate and agree together, to form and associate themselves into a society or combination, and then and there did with like force and arms and in like manner, form and associate themselves together in pursuance and furtherance of said combination, conspiracy, confederacy and agreement, into a society and combination, and did enact certain by-laws, rules and regulations, by which it was agreed by them the said conspirators, that they would not work in the employment or shop of any master cordwainer in the said borough, who had in his employment any journeymen cordwainers who were not members of their said society, who did not conduct himself according to their said by-laws, rules and regulations; that they would not do or perform any work as journeymen cordwainers, unless for such prices as they the said conspirators should agree upon and regulate; that they would not permit any journeymen cordwainers who were members of said



society, to work in the employment of any person unless for such wages as the said society should agree upon and regulate. And that they the said conspirators, would withdraw [10] from the service and employment of any master cordwainers in said borough, who would not pay them such wages as they in their said society might agree upon and regulate, or who would employ in their shops or service, any journeyman cordwainer who was not a member of their said society, who had been expelled therefrom, or did not comply with all their by-laws, rules and regulations – To the great injury, damage and oppression of the good people of said borough and of the master cordwainers, and other workmen and journeymen in the said art and occupation of cordwainers, to the evil example of all others in the like case offending, and against the peace and dignity of the Commonwealth of Pennsylvania. And the inquest aforesaid on their oaths and affirmations aforesaid, do further present, that the borough of Pittsburgh aforesaid, is, and for a long time past has been a large trading and manufacturing town. That the said town hath been greatly enriched, and the inhabitants gained great sums of money by their skill and industry and manufacturing. That great sums of money have been acquired by the skill, industry and enterprize of the master cordwainers of the said borough; to the great benefit and advantage of the said borough, by the making, manufacturing and selling of large quantities of boots and shoes to divers persons residing out of the said borough, and out of the Commonwealth of Pennsylvania; thereby greatly tending to the wealth, improvement, and prosperity of the said borough, and the inhabitants thereof; yet well knowing the same, and also, falsely, fraudulently, unlawfully, maliciously and



oppressively, intending, designing, and combining unjustly and injuriously to raise their wages, and the wages of all other journeymen cordwainers, and the price of boots and shoes in the said borough, and to extort large sums of money from the inhabitants of said borough, the master cordwainers in the said borough and divers other persons who resorted to said borough to purchase boots and shoes, the said Thomas Macky [*et al.*], late of the said county, workmen and journeymen, in the art and occupation of cordwainers, on the twenty-seventh day of October, in the year of our Lord one thousand eight hundred and fifteen, at the borough of Pittsburgh, in the county of Allegheny, and within the jurisdiction of this court, with force of arms, unlawfully, falsely, fraudulently, maliciously and oppressively, did meet and assemble themselves together, and being so met and assembled together, with force and arms, and in like manner, did conspire, combine, confederate and agree together, that they would form and associate themselves together into a society or combination, and did then and there in like manner combine, conspire, confederate [11] and agree, that they would join and become members of a society and combination, so in manner and form, formed and associated together— And did then and there in like manner, combine, conspire, confederate and agree together, that they the said conspirators, would not work as journeymen cordwainers, unless for prices as they the said conspirators should agree upon and regulate, or such as had been agreed upon and regulated by said society, or permit any journeymen cordwainers who were members of said society to work in the employment of any person, unless for such wages as should be agreed upon and regulated; and that they the said conspirators, would withdraw themselves from the service and employment of any

master cordwainer in the said borough, who would not pay them and all the members of said society, such wages as had been or should be so agreed upon and regulated by said society, or who would employ in their shop or service any journeyman cordwainer who was not a member of said society, who had been expelled therefrom, or who had refused to become a member thereof, and did not comply with the rules and regulations of said society, and in pursuance and furtherance of said combination, conspiracy, confederacy and agreement, the said conspirators did then and there absent and withdraw themselves, and procured divers other journeymen cordwainers to this inquest unknown, to abscond and withdraw themselves from the service and employment of divers master cordwainers in said borough, and did then and there wholly refuse to work for said master cordwainers: whereby divers master cordwainers in said borough were obliged to discontinue and abandon the exercise of their art and occupation as cordwainers, to the great injury and obstruction of the trade, business and prosperity of the said borough, the great impoverishment and oppression of the inhabitants of said borough, of the master cordwainers, and all other workmen in the said art or occupation in said borough, the evil example of all others in the like case offending, and against the peace and dignity of the Commonwealth of Pennsylvania.

WITNESSES FOR STATE: John M. Phillips, Andrew Willock, William M'Granahan, Walter Glenn, Adam Moreland, Patrick Magee, Thomas M'Fann, John Douthitt, James Harman, David Jones, James Riddle.

JARED INGERSOLL, *attorney general*. You observe, gentlemen, that this indictment contains three counts; the first, charges the defendants with combining and

conspiring together, to form a society for purposes highly prejudicial both to individuals and society in general. The second, [12] charges them with the formation of that society in pursuance of such confederacy. And the third, charges them with acts resulting from that confederacy injurious to employers, to journeymen, to Pittsburgh, and to the whole community. Gentlemen, it is proper for me to explain to you what is meant by, and what amounts to a conspiracy. A conspiracy, is the combination, confederacy, agreement together, of two or more, to the prejudice of the rights of others or of society. And the conspirators are punishable for the conspiracy, although they do not act in pursuance of it, with these principles I apprehend, the spirit of all the cases in the books, is perfectly congenial. But, gentlemen, that you may be enabled to judge for yourselves, I beg leave to call your attention to some of the principal cases. A conspiracy at common law, is where two or more, by malice or covin, conspire and confederate together, wrongfully to prejudice a third person, or to do any unlawful act, *Terme de la ley Tit. "Confederacy."* Stubbs, *C. C.* 156. 1. Hawk 348.—Covin signifies a secret assent, determined in the hearts of two or more, to the prejudice of another. *Terme de la ley.* Every confederacy to injure individuals, or to do acts which are unlawful or prejudicial to the community, is a conspiracy. Journeymen who refuse to work in consequence of a combination, till their wages are raised, may be indicted for a conspiracy. 4 *Christ. Black. Com.* 458, note 4. All conspiracies whatsoever, wrongfully to prejudice a third person, are highly criminal at common law. Stubbs, *C. C.* 156. Journeymen confederating and refusing to work, unless for certain wages, may be indicted for a conspiracy, for the offence consists in con-

spiring and not in the refusal, and all conspiracies are illegal, though the subject of them may be lawful. 1. Hawk, 348. 8. *Mod.* 11, 320. The gist of the offence, is the unlawful conspiring to injure a man. 3. *Bun.* 1321. The fact of conspiring need not be proved on the trial, but may be collected by the jury from collateral circumstances. 1. Black. *Rep.* 392. 1. Str. 144. If the parties concur in doing the acts, although they were not previously acquainted with each other, it is a conspiracy. 1. Hawk. 948. The conspiracy is the gist of the indictment, and although nothing be done in prosecution of it, it is a complete and consummate offence of itself; and whether the conspiracy be to charge a temporal or ecclesiastical offence on an innocent person, it is the same thing. 1. Salk. 174. 2. Ld. Ray, 1167 and 1169. 3. Ld. Ray, *Ent.* 53. Every unlawful conspiracy, or confederacy is punishable, although the conspiracy or confederacy be not executed; and the conspirators may be indicted although they do nothing but conspire together. 9. Co. 56. The law punishes the coadunition, confederacy or false alliance to the end, to prevent the unlawful act. 2. Inst. 48. It is adopted by Blackstone, and laid down as the law by Lord Mansfield, that an act innocent in an individual is rendered criminal by a confederacy to effect it.—Trial of cordwainers, Philadelphia, page 147. *P. Cw.*

[13] TESTIMONY FOR THE PROSECUTION.

ADAM MORELAND, called and sworn. I was one of the first members of the society about six years ago: I belonged to the society about fifteen months; as to the constitution I disremember, the rules I recollect; they swore not to work for any employer who would not give the wages.



Mr. Campbell, for the defendants, objected, That the by-laws themselves would afford the best evidence of their contents; and that notice not having been given to produce them, parol evidence of their contents would not be received.

Mr. Baldwin, on the part of the prosecution, urged, That the Count in the Endictment which charged defendants with having made illegal by-laws, was itself notice. . . .

[The evidence was admitted.]

WITNESS. The journeymen Shoemakers were members; the object of the first formation was to raise their wages. I recollect William Lewis, Chr. Barton, Conrad Kinkle, John Ward, def. was one, also a man of the name of Duncan; can't remember whether any of the defendants except Ward belonged to the society while I belonged to it. The first meeting we had, we agreed to turn out in case they would not give the wages, it was 12½ cents rise on shoes; we got the wages. Don't know whether the Master Shoemakers knew we intended to turn out before they gave the wages. We had it in idea to guard against administering the oath, we merely repeated an oath. The words were repeated to them if they did not know them. Don't recollect whether they used a Bible. Words were repeated to myself by William Lewis, he had a title, but I don't recollect whether it was President or Secretary. The words were "not to work for any employer who did not give the wages, nor beside any journeyman who did not get the wages." The means we took to get our wages were a turn-out: Scabbing a shop is leaving it, and those who worked there after that were Scabs. Andrew Willock's shop was scabbed soon after we formed the society. He has given up the business for some time. A stand was made



against Mr. Riddle while I was a member. There was an old [15] Mr. Smith, a shoemaker, who was put in jail, his family was poor; his wife went to Mr. Riddle. Coarse shoes were then under the regulations. Riddle gave him work, and it was not two hours before a man came to Hannan, Kinkle and myself; Hannan and I went to Mr. Riddle, told him he had given work to the man in jail – we required Riddle either to hire him by the month or to discharge him. In hiring him by the month, we were clear; if he would not do it we would scab him. Riddle said he would not withhold a charity from that man and family. Riddle went out. We spoke to the foreman to get Mr. Riddle to hire the man by the month, so that we could continue at work. When Riddle came in he gave us our work; we took it home, but immediately brought it back – before we brought it back Riddle had hired the man by the month, and then we took back our work. I have been an employer better than five years. About nine weeks ago there was a turn-out – they all left me – I had only one at the time of the turn-out, it was Francis Logan. He was a regular workman – he did not leave me, but continued at coarse work – they don't belong to the society now – since that he has made only about a pair a week. Before the late turn-out William Meloney and another whom I don't know, came to me with a list of wages, and asked me if I would not sign it – I said I would not be the first to sign it, I would consider on it. They said nothing. After this my man left me. I have no journeyman now. I have a wife and five children and pay rent for my shop, \$125.00 a year. I have no other means but my trade for making a livelihood. Last December there was a turn-out for higher wages; the employers prosecuted them, and they compromised the

business – the journeymen paid all costs and sat down to their wages again. Geo. Morrow, Jno. Hood, Geo. Burns, Jno. Burnside, Jno. Smith, Wm. Meloney, Sam. Beler, Sim. Glenn, Wm. Low, Francis Logan, Ino. Ward, and Geo. M'Munn, belonged at that time to the society. There was a call upon me with a list of prices. The coarse shoes cost us more trouble than any other. Bad workmen work at coarse shoes – they complained, and long since coarse work was thrown out of society. Riddle was always liberal to me in giving wages. I understood that Riddle had at one time twenty-two “jurs” at work, employs some women to do the lighter part of the work. At last turn-out, Tho’s Mackey, Geo. Morrow, Kendal Webb, Edward Hughes, John Hood, Christian Mindeher, Geo. Burns, John Burnside, John Smith, William Meloney, Samuel Beler, James Davis, Hugh Kees, Simon Glenn, James Rice, William Low, F. Logan, Thomas Reed, John Ward, John Dobbins, and Geo. M'Munn, were of the society. At the turn-out last year I think the principal stand was against Riddle. No shops scabbed. At last turn-out Mr. Riddle, Glenn, M’Grannahan, Douthitt, M’Fannand and M’Kee’s shops were abandoned by the old journeymen, wages given at last turn-out were the same as given [16] last year, though they turned out for higher; they raise a quarter on cossacks, 11 pence on shoes.

(*Cross examined*) When we first turned out, thought our wages too low, cossacks only \$1.75, now they are \$3.25; we received 11 pence on cossacks. Mr. Willock never would agree to give it. The employers had meetings and talked over the affairs – talking about their work – never agreed about the wages they would give – all agreed they would not give the wages they now ask. They were perfectly willing to continue them at the old wages. A long time since I attended meetings of the

employers – it was that we should all be of one mind – never any writings – talked over the business with the jurs – never had a president or a secretary – the prices agreed on by the employers was uniform – late turn-out for 25 cts. on boots – the old constitution destroyed as I have understood – constitution written and by-laws printed – at first turn-out we were under no engagement to the employers – work is generally given out by the pair – tools found by journeymen, employers formerly found thread and wax – Logan was under no engagement to me – I don't know that any of the journeymen were under any – journeymen for some time past, found wax and thread – when society was first formed, price of board \$1.50 – our first constitution was written – the price demanded last October was 25 cents more on cossacks, 11 pence on shoes. I have filled small orders – good worked cossacks I sell for \$11.00 common work for \$10.50, some for \$10.00, from \$10.50 to \$11.00 for bespoke work – a year ago we sold for the same – within a year work has risen half a dollar – employers never at any meeting entered into a resolution for carrying on the prosecution – they agreed each to contribute a little – employers never met except after a turn-out. While I was a member no employer could give work to a man except he belonged to the society – there was a tramping committee employed to go round and inspect the shops – the first persons engaged in the bringing about this society was Mr. Kinkle; he came from Hagerstown – the most active in forming the society were from below – I came from Philadelphia about nine years ago – I belonged to the society in Philadelphia when they were prosecuted – After the last turn-out employers agreed not to employ any journeymen to work unless at the old wages.

JOHN M. PHILLIPS, sworn. Between three and four

years ago, since I first came to Pittsburgh, I got employed by Mr. Andrew Johnson. I was asked by some that worked in the shop, whether I had any objection to join their society. I informed them I had not. On the 1st Monday in next month, I think July 1812, I went to the society; according to the then form I joined it. The manner of joining the society was this, we put a printed bill of wages in the Bible, and then swore to work for no less wages than that bill contained, the work being done in the borough of Pittsburgh. If we worked for the country employers, [17] the oath had nothing to do with it – the motive of the oath was to support the wages of the town. We next on the same evening had a turn-out; a new list was put into the book, and we swore we would not work for less wages in the borough of Pittsburgh for one year. This rise of wages, though we got it in three or four days, did not keep us at peace for more than a few weeks; we had peace a short time: next fall turned out again, had some difficulty in getting our wages for that time; turned out a week, but at last got them; that list was sworn to. After second turn-out we introduced a fifth by-law, it was wrote before it was brought into the society. We took the Bible in hand and swore to support by-law the fifth. (Witness was going on to state contents of by-law, counsel of defendant objected, testimony overruled.)

WITNESS. Old constitution not in force now; I don't know what has become of it, (given up 1st January last) I never heard defendant say what had become of it. At our meetings we had several agreements about wages before turn-out a year ago, the committee appointed to report a bill of prices, next morning sent round to employers to know whether they would give those wages, the bill was rejected – had a turn-out for



about two weeks – afterwards had a private meeting on account that our constitution was considered as illegal, and to strike out certain parts of it; we agreed to take the advice of a gentleman of the law, and by his advice, that it was better to compromise the dispute if we could, we did compromise by paying the costs. Resolved, at the same meeting, that a new constitution should be drawn up. Allowed it to be brought forward next monthly night to be acted upon, but I did not attend. At the monthly meeting in March, the new constitution was not put in force, the old constitution was annulled the January preceding. I found at the March meeting that two verbal resolutions had been entered into: the one was, not to board with an employer, and the other was, not to make the feet without the journeyman fitted the legs. They said the reason of the last resolution was, that the employers' apprentices should not be employed to fit boots, for the journeymen to make the feet. The object was to prevent the apprentices from fitting the legs. Fitting, is sewing the leg and making it ready to put feet to it; at that meeting there were present, George Morrow and others. In the June meeting there was brought forward a resolution to write to the societies in Baltimore and Philadelphia, and to agree with them not to receive any members of their societies, unless they produced certificates of belonging to their societies, and then if he came to the place without one, they would not work with him. Our regulations in the old constitution were, that if we were absent first monthly night, 12½, next monthly night, 25, and third night to be expelled, unless pay \$3.00, as our laws were so ameliorated that any member might work without belonging to the society. I had determined never to go nigh them any more – [18] Accordingly on the first



Monday in September, I received a verbal notice from the secretary – I said, I don't intend to come if you would give me twenty notices – did not go, and was excluded of course under the old regulation – A deputation afterwards attended at my house, consisting of Rice and others (not defendants,) asked my reasons for not coming to society the last evening, I told him the irregular proceedings of the society disgusted me so much. I attended the same evening, and by proving their proceedings to be illegal, according to their constitution, I was admitted. There was a resolution then passed, that those who had taken in their work, might take it back again. Our next meeting after this, was 1st Monday, October; a sealed paper was produced on the table, this paper when opened, appeared to be a bill of wages, it contained a rise on almost every article that we worked upon. Heard Mr. Webb say he wrote it, and he burnt it. This bill of wages with a little alteration, was agreed to be sent round to employers to know whether they would acquiesce in it – understand it was rejected by all of them. I went to work the next Friday, at the old wages – In effect, though not perhaps according to their law; though by their actions, I am turned out of being a member of their society. Last turn-out still continues. Webb and Hughes, give the present wages. I did not agree to the late rise of prices; there were twenty-four voted for the rise and six against it. The turn-out has injured almost the whole business of the shop. My objections to the rise, was that I thought the wages high enough; an industrious man might support himself and family with the present prices; marketing cheaper than last year – common week's work upon cossacks is nine dollars, I have earned twelve – wages paid every Saturday evening. In

fixing prices by society, no distinction made between good and bad workmen – if employer should employ a bad workman, under the rate of prices fixed on, they would leave the shop. Mr. Riddle offered to give Philadelphia wages – besides the price commonly given, extra work paid for. Last year some articles were raised – have never known these people to come down in their wages, in consequence of the fall of marketing.

(*Cross examined*) I know of no agreement among defendants, to compel employers to give the wages demanded. When Mr. Riddle employed me, they left him – Samuel Beler was one, Geo. Morrow, Kendal Webb and Hughes – they carried in their work to Riddle, because I did not belong to the society. It was always mentioned that they turned out for want of higher wages – vote was put; whether we should abide by the bill of prices. In September, four members said they could work no more for Riddle, unless I would come and pay off the books. Rice was one. I think they turned out, as they passed a resolution the very next meeting, that they might take out their work; when vote was taken, there was nothing about the penalty of working at old wages. John Smith and George Morrow, were at March meeting last; [19] there were more, but I don't recollect them. I don't know that any one of the defendants have subscribed present constitution. About three years ago, I began to make cosacks, I got \$2.25 cents; then they sold for about eight dollars. Since turn-out first Monday in November, I paid off and considered myself a member, until last Saturday. Don't recollect that any one of the defendants told me, they would not work with me if I did not continue a member of the society. Old prices agreed

to in January 1813. It is a benevolent society, if a member is sick, he has three dollars a week. Macky, Morrow, Webb, Hughes, Hood, Burns, Burnsides, Jno. Smith, Meloney, Beler, Davis, Kees, Glenn, Rice, Cas-sedy, Reed and Dobbins are members. We had a constitution and by-laws, had a president and secretary, and three committee men and steward; during a turn-out we had a committee of vigilance – none appointed this year – use of the committee, was to go round and see that none was working unlawfully. Fitzpatrick, a sick member, got \$3 per week. At first turn-out in July, 1812, cossacks were  $\$2\frac{1}{4}$ ; we turned out for  $\$2\frac{1}{2}$  – The fall following (October) we turned out for  $\$2\frac{3}{4}$ . Mr. Riddle at the same time we turned out, offered any or the whole of the society \$3 for cossacks; those that worked for Mr. Riddle received \$3; while those who worked for others, had but  $\$2\frac{3}{4}$ . This produced in the same winter, another turn-out against other employers, in which we gained \$3 from others. Have heard some say, they left Mr. Riddle on account of his boarding – have heard others say, he kept the best table in town. No fixed allowance to poor members on a turn-out – when poor members, on a turn-out, were distressed for market money, were allowed to take three or four dollars out of the box. Last year some little taken out for relief of William Low. In the fall of 1812, we took an oath, not to give more than two dollars a week for boarding and finding to any employer; we thought it duly proportioned to the wages given by them. I boarded at home and took the oath by way of accommodation.

JOSEPH M'QUISTON, sworn. I lived in Butler, came here for instruction in the trade of shoemaking, my father told me to go to Mr. Riddle, came to Mr.

Riddle, who was not at home; foreman gave me work, until Mr. Riddle came home – when he came home continued me. Foreman went and got a William Anderson to instruct me. Mr. Riddle's foreman told me, I had best join the society and draw the wages – I joined the society in January 1814. William Anderson told me the rules of the society, before I joined it – he said when I joined it, I must pay fifty cents, and monthly twenty-five cents; said the money that was put into the funds of society, was to support the sick: he was instructing me and said, he would make my work draw the wages. Anderson said there was a rule for every jur that came to town to join the society. Never heard any of the jurs say what would be done, if a jur did not join the society – never heard any rule, as to any thing to be done for working at under [20] price. Mr. Riddle had employed Mr. Williams by the month. The society heard he was working against the rules. Williams had brought in a pair of boots that was foxed. Closey told me, he had the man hired at \$6 a week and board. I returned to my shop. Mr. Hood asked me if I had heard of it; told him I had, and seen the work: some of them mentioned they would have Williams brought up before the society – He was brought up before the society, on purpose of fining him for working against the rules of the society; he was brought forward, but not fined; they let him off on condition, that he would become a member of society and draw the wages; don't recollect what they said to Williams about their rules. I believe Mr. Riddle lost this man. Don't know what would be the consequence if I worked for less wages. Anderson told me it was customary for every jur that came to town, to join the society. When I came here first, it was my main object to work the feet of



boots – I had a sett of feet a while. There was a turnout in February or March, against working feet on boys fitting. It was considered in society, that there were a number of jurs in town that were too weak to make feet, and was agreed that some of the stouter ones might make the feet and the weaker ones make the legs. Don't recollect what was to be done with jurs who made feet. Never heard any thing in society of fining a person for working at less wages or working by the month. At meeting in February, jurs considered that Mr. Riddle had boys enought to make feet – he had two boys at fitting, and others who could make feet. I had a pair of feet out, took them in next day to Riddle's – he offered me a pair of legs of boys fitting – I would not take them – he gave me a pair of shoes – I would not have been permitted to take the legs – had no objection, but for the society. Boots would have been most benefit to me for my instruction – I could earn most at the boots.

(*Cross examined.*) It was a customary rule for journeymen coming to town to join the society. None told me I would be fined for not joining – I don't know of any person being fined for not joining society. When Williams was brought into the society, that night, it was mentioned generally, to fine him; can't say, I heard any person say it was a rule to fine any person for not joining society; never heard of any person being fined, or threatened to be fined for not joining the society; never heard Anderson tell any person, there was a rule to fine any person, for not joining the society. I withdrew from the society, without paying any thing; any one might do it: I don't know any thing that would prevent my leaving the society; never knew any member take an oath. After I was subpœnaed, I happened to be in a shop, where Cassedy and others were working, he said



he allowed I need not attend, on such short notice – was subpœnaed some time last week.

JOHN SCOTT, sworn. Came from Baltimore to this place in 1812, undertook work for Mr. Johnson, I made but one pair of [21] boots. I understood by John Smith and others, that an oath was necessary to join the society, I objected and refused; they mentioned, they would not work by any person, or in the same shop, unless they would comply with all the rules of the society; I don't know that I would have to swear, but I understood so; did not mention that it was a rule of the society; but said, they would not work with me. Johnson told them I was willing to pay any thing the society would require, if they would let me off from the oath. I left Johnson in consequence of what they said. Smith mentioned to me, that there was a young man, who would not take the oath, and could not get work to his mind; the man came in, and Smith told me that was the man. Smith said it was the religious scruples of the young man, that prevented his taking the oath; that was in July or August 1812.

THOMAS M'FANN, sworn. At the time of this last turn-out I had no men belonging to the society; I had men in my employment, but they did not belong to the society; they did not leave me; they were boys; I had no man to work. John Ward called about two weeks after the turn-out, he asked me if these boys were sufficient to make work for my shop; I said they were not: that they could not make my boots. He told me at the same time, that if I kept those boys in my employ, I need not expect to get any other journeymen, except them boys would join the society; I told them, that boys were not their own masters, that they were apprentices to their father, at least that he told me so; I never em-

ployed the boys, but paid their father for their work, except they would do a cobbling job after hours. Ward told me, that he and the president of the society, had just come from the boys, and that they used much the same reasoning as I had done; I said, I know you intend to scab my shop, if I keep the boys, but I will keep them in spite of you. Wm. Anderson came into my shop about two weeks before the turn-out, he said Mr. Riddle might quit business when he had a mind, for his trade was, or would be done over, as Dallas and Badgely had got most all of his customers. Anderson and Dallas married two sisters. Another reason that he gave, was that Mr. Riddle had no good work made, and that he had none but boys; don't recollect any other reason. Riddle's boots were bound in my house and I therefore had an opportunity of knowing that what they stated was false. He said nothing about wages, a turning-out or society.

(*Cross examined*). I have the boys still. When Ward was at my house, he was about half and half. I understood every word he said. He said he would give me a hint if I could take it; none have since called on me for work: I subscribed five dollars to carry on this prosecution; likely we had a meeting last fall was a year. There was a time the journeymen refused to instruct our apprentices – we considered it right, not to employ journeymen's apprentices. I was present at a meeting at M'Clintock's, of [22] the employers; two years ago the journeymen would not board with us.

WILLIAM ELLIOTT, sworn. Mr. Ward and Redmond came to Mr. M'Fann's shop, Redmond asked if I had not quit work, I said not, he asked where my father was gone, I said to the Forks of Yough, he then asked if my father knew of the turn-out before he went away, I an-

swered I believed he had. Ward told Redmond he had better go to Mr. M'Fann – Mr. Simon Glenn and Rice told us the morning after the turn-out, we had a right to work for any person and for what prices we pleased, they often told me so since I had asked their opinion about it – did not ask me to join the society – never persuaded me to leave my master – they said every one that worked at journey-work, were at liberty to work for whom and for what wages they pleased.– Had not heard of any prosecution against these men at that time – Rice had returned his work to Mr. Riddle that morning – it was finished.

JOHN M. PHILLIPS, called again by counsel for prosecution. So long ago as 1812 we took an oath not to give more than two dollars for board and finding to the employers – had leave to give what we pleased to others – when I first took the oath I thought the board proportioned to the wages – we were compelled to take the oath or leave society – the consequence was you would be expelled the town – I had to take the oath, though a married man, no one would work or board with an expelled member, these articles I drew myself, as secretary; when I first came to town there was a constitution, it was repealed, another adopted, which continued in force till January, 1815; if a man did not comply with all the rules he would be expelled – there was no alternative – apprentices did not, but all jurs did, belong to the society; one Pooley they would not have, because he was drunken and disturbed the society, they let him do as he pleased – he was specially excepted.

PATRICK M'GEE, sworn. At time of last turn-out, I had two men working for me, one Richard King, on coarse and fine work, the other, Thomas Reed, on fine work: two or three jurs came to my shop (William

Meloney, Edward Hughes) to get me to sign a bill of wages – asked me to sign the bill – told them I would not. Bill – cossacks \$3.25, fine shoes \$1.25, men's pumps \$1.12½. When I refused to sign, they said no more to me, but went out. Some time after this, Reed made two or three pair of coarse shoes – after that asked him if he would make me a pair of fine shoes and I would give him the wages or any thing in reason – said he would – he got the stuff and went away, and staid about half an hour, and came back – said he could not make them for me, this the secretary or president told him; I could not have them made unless I would sign a bill of wages. A certain time after the turn-out, Geo. Morrow came into my shop, he said in a merry mood, if I would not give [23] the wages my shop would be scabbed. I answered I did not regard it; I told him I would not sign it until a majority had signed it. Had journey-men boarding with me last winter a year – two or three boarded with me at one time, viz. John Burnside, Cornelius Mulhollum, they left me at the time that I had a man working for me on coarse work, and I was going to the country and wanted him to make a pair of fine shoes for me, that was the reason of their leaving me – they told me so – they would not board in my house if I employed him to do fine work – they did not board a week with me after that – they were not working for me.

(*Cross examined.*) Have met with employers occasionally, we agreed to contribute a mite in carrying on this thing. – I met with employers last fall at M'Clintock's, there was a proposition to elect Thomas M'Fann president and James Harmon secretary, it was agreed to – it merely occurred for the night – it was spoken of that a journeyman's apprentice would not get



work from an employer; the reason was this, journey-men would not work when apprentices fitted the legs, it was agreed to.

DAVID JONES, sworn. I was called on, on 3d October last, by Meloney, Hughes and Mindeher – asked if I would sign the list of wages they then held – told them I would not be the first and neither would I be the last – they left me and returned (Hughes and Mindeher) two or three days afterwards it was signed by Dallas and Badgely – refused to sign. I had one journeyman named Clark at time of turn-out – reason he gave was, my not giving the wages – was a member of society – has not come back. Last spring had a journeyman, not a member – I was up in my shop, a man came of the name of Wright, he asked me who he was, told him he was a man of the name of Bedgar, who had not attended their meetings; Wright said he would have him notified to attend next night – came to give notice – shewed him up stairs – did not hear notice delivered. Before Wright left the shop I stated that Bedgar was not well from a fall he received, that he was a poor creature, and that I had taken him out of jail – several times told Wright he was not able to work or gain a living, that he was indebted to me \$14 or \$15 told Wright I suspected Bedgar was unable to pay his fines – Wright said they would make it as easy as possible. On the evening of the meeting, Wright the elder came to my house – asked me where Bedgar was, I told him he had gone home – sent one of the boys with him to Bedgar. I believed Wright was a member from his coming after Bedgar – the young Bedgar told me he was a member, old Bedgar did not – this was last March.

(*Cross examined*). At time of turn-out Clark threw up his work and said he wished the thing could be com-



promised – his work was finished. I have two journeymen making patent shoes – work at Dallas and Badgely's shop is good – Clark was under no engagement with me at time of turn-out. Dallas and Badgely told me they did not give the wages they turned out for.

[24] JOHN M. PHILLIPS, called again by counsel for prosecution. Bedgar was a member about two years ago – did not attend – some time ago in March or April, came and offered to pay off arrearages, on being admitted – proposal agreed to – I was employed to count up the sums, but he went out of town and nothing further done – consequently not admitted. Don't recollect any person of the name of Wright belonging to our society. – More than two years before last March that Bedgar attended.

JAMES HARMON, sworn. I was a member in 1811. After I was free I was notified to attend their meetings – object of notice was that I should become a member; Lyon, a member, inquired of me why I did not attend the meeting, he said I had better join them – he thought they could fine me for not attending – told him there was no other person working then at that time, and that I did not consider myself under any obligation to attend – told me if I left Mr. Barnwell I had better join, for if I did not, all who were working with me would leave the employer. I attended first Monday in June – enquired if it would make any difference whether I joined or not – don't know who the persons were – don't recollect the reply – I joined the society – I took the book which was lying on the table, I swore by the contents of that book not to work for less than the wages fixed, till first October. I then attended the monthly meetings till in August following; very shortly afterwards was called on to attend an extra meeting – I went – it appeared there was a strike for higher wages –

wages were very low at that time – they all swore but myself not to work but under the new bill for one year from first Monday in October next. I had some work out which was not finished, I took it in to Mr. Johnson my employer had by that time obtained consent of employers to the new bill – Johnson asked me if I would have work – said yes – asked if I had sworn in – I said not – he said he would give me more work when I would join the society. I understood the journeymen would not work with me unless I would join next day; I went out, met Smith and others, told him I would wish to join work – said he supposed I could do that if I would agree to their rules – inquired if it would make any difference if I would go to work and not swear till next meeting – said I could be sworn any where, no matter whether at Johnson's or elsewhere. They went with me to Mr. Johnson's shop, a Bible was handed me by Mr. Smith to swear by – he told me to repeat the words used in the meetings – I took an oath and went to work. My reasons for refusing to swear at first, were, I did not think the wages could be got, and that employers could not afford to give them; I thought it was better to take the oath than to leave the place; I did not represent my situation to Mr. Smith, I had the care of a sister and mother. I was a member five months – had no other turn-out during that time. I set up for myself after that. Last summer I had two journeymen and one boy, [25] Thomas Reed who was hired by the month: after I had hired this boy, Mr. Low and Mr. Gibbons told me I must discharge him or give him work not contained in the bill, or they must leave me – told them my necessity for their work was great at that time, that I had made a contract with him and that I would not part with him; this was on Monday morning, I offered them my work and they would not accept of it: they

told me, you know the rules of our society will not admit of our working with you if you keep him. They left me, Mr. Low went to work with Mr. Riddle – I kept the boy his month and he left me, he wanted the wages, I told him I did not think his work was fit to draw the wages, he told me Gibbons had often spoke to him to attend their meetings – I think the boy works for himself now. When Mr. Campbell lived in this place, he was an apprentice to him, when Campbell went away the boy went with him as far as Steubenville – said he came away from Campbell without his knowledge. Last summer I applied to Low to make me a pair of boot feet – legs were fitted by one of my boys – told me he could not do it, the rules of the society would not permit him to do it – I told him that he had done it a short time before – he said it might be, they had made new regulations. At last turn-out Meloney, Mindeher, and Hughes, called on me with a bill of prices, asked me if I would sign it, I told them no, unless the other employers did, they left me – I had two journeymen Mr. Low and Mr. January; I had some work out at that time, I took a pair of pumps to him, he could not do them – said there was a stir in society the night before – he had promised to make me the pumps, finally agreed to make them – did it and left me, then went to work for Dallas and Badgely at new bill of wages, as he said.

(*Cross examined*) Employers met more than monthly – not regularly notified to attend – object of meeting was to regulate our own prices at which we sold our work; afterwards we met to consult each other about the wages of journeymen – don't know that we pledged ourselves not to give more than certain prices – Some agreed not to give the prices – I said I would contribute money, if there was great need of it, to carry on this prosecution.

WILLIAM M'GRANAHAN, sworn. First of October last both the jurs that I had joined the society; William Snee had been a member, and the other man had been in town but a day or two – Snee said he must join. Mindeher, Meloney, and Hughes called on me with a bill of prices, asked me to sign it – I told them I would not, I thought it was an imposition. Snee when he had finished a pair of boots left me, the other staid that week at woman's work and went off. My son came up the Friday morning after the fire, he had been a member of the society – wished him to work – offered him a partnership – said he wanted to take a trip to the sea-ports and would then join me – wrote me that as soon as the turn-out was settled he would come back and [26] work. Last fall a year the making of cossacks was three dolls. a pair, price of boots ten – raised one dollar since the duty – raised twelve and a half cents on pumps and shoes, and a quarter on footing old boots – I have risen a dollar since the duty. A man may make three pair of boots in a week – three pair a week's work.

DAVID JONES, called again. I never could make a calculation that boots would cost me less than \$8, cost including duty would be \$8.68, we sell boots by whole-sale at \$105 per doz. pair; 12 skins will weigh, say 30 pounds, will make 12 pair.

WALTER GLENN, sworn. Last turn-out 3 of them called on me, Mindeher, Meloney, and Hughes, with a list of prices – I declined signing it. My journeymen at that time were Meloney, Smith, Macky, James Diving, another whose name I don't recollect, and my brother, all left me after finishing their work. My brother came home about a week after turn-out, I offered him work by the week, said he could not work on account that he would gain enemies by it or be found fault with – he left me – my brother went out to work



till last week, when he returned and I gave him the wages. I offered Thomas Macky and my brother the Philadelphia wages, Macky said he would come next day and work, but came next day and said he would not work for Philadelphia wages, said he would not be controuled by Philadelphians, said their own wages were not higher than Philadelphia wages, but they would have Pittsburgh wages. All the employers agreed to give Philadelphia wages and agreed to board them at \$2.50 a week, and find them with room, fire, candles, etc. Ever since the turn-out I have done no business, one journeyman cobbled for me – great many of my customers in a manner barefooted, wearing their old shoes – some went to the stores. Last summer I had 10 or 11 journeymen and 1 apprentice – had plenty of custom if I had men to do the work – not sufficient custom in the place for 11 journeymen, but sufficient with orders. Some time since, say last summer, till turn-out I paid my hands \$30 or \$40 every Saturday night: one time last spring I had \$1100 or \$1200 worth of stock, more than half of our work sent down the river, two or three pair to one of custom work – if I depended upon customer's work – could not keep more than two or three journeymen – we can sell all the work by filling orders – never any trouble in getting rid of our work, often have difficulty in filling orders. I had six journeymen at turn-out – I sold to Mr. Riddle \$800 worth to fill orders – we sell order work lower than other work; the cheapest times we never sold lower than \$96 per dozen – reason of selling it lower, that it is made in dull times; our order work is paid well sometimes, sometimes paid at 2, 4, 6, and 12 months. Don't know Dobbins or Cassedy – Mr. Riddle and myself told Ward to go to work, that it



was better to go to work than to go about the streets half drunk, he said, do you want me scabbed.

[27] (*Cross examined*) Employers often met in our own defence, when journeymen turned out – often met afterwards to take a mug of beer; never any private meetings, they were for self defence. One night met at Hopkins', Smith came there, said he came forward for himself and not for any other person, he wanted our list of prices, we gave it to him, and he said he would return it next morning. We ascertained the Philadelphia prices in some articles, Philadelphia prices same as here, except in back strap boots. Employers met once a month, it was spoke of that we ought to meet the same night as the jurs met. One half of the journeymen could not live without order work. We met at M'Clintock's this fall a year, I did not say I would go home and pay the wages.

JOHN DOUTHITT, sworn. On first turn-out, after I belonged to society, I gave out of the funds, to Robert Duncan, one and a half or two dollars for marketing, by order of the society, I was secretary – this was in 1811. Don't know of any stand made against a shop on account of a journeyman working at lower wages; I recollect that one Lyon worked for Riddle, and Smith, Nodle and myself discharged Riddle, on account of his working at lower wages; Lyons was working at home – one Kellow and myself called at Riddle's shop – I went into Mr. Riddle with my work, because Lyons was scabbing it – Lyons was a member; we were at liberty to go where we pleased – I am an employer now – never knew any money given out, except to one Mochman, who was sick and died. Served my time with Mr. Riddle, got enough to eat and drink – don't know that I ever heard of any one leaving Riddle on

account of his boarding. I paid ten dollars for the support of this prosecution. (Mr. Douthitt's calculation of cost of a pair of boots is \$8.56 $\frac{1}{4}$ ; price to customers \$11.00.)

THOMAS M'FANN, called again by counsel for prosecution – Two men called on me to employ them, said I would if they could get boarding – could not get boarding – weather cold and their shoes worn out – came from Baltimore or Philadelphia – were in apparent distress – inquired for the president of the society – through charity, gave each of them a dollar, to carry them to Washington – I offered them boarding, but they would not board with me, I had three journeymen at the time.

JAMES RIDDLE, sworn. I generally employ from fourteen to twenty-two hands, including my boys – have but two boys that can make good work. My bill for eleven months, for leather from Story & Co. was upwards of \$5000. Previous to last turn-out, made from 112 to 120 pair of boots per month, two thirds were order work – I now make about forty pair – last week I made about seventeen pair – I have now three journeymen, a boy, and two young lads by the year – I employ a woman for binding boots – two or three days previous to turn-out, two or three went away – at turn-out fifteen or sixteen left me – [28] I have Pooley, who has liberty to work – he presented me with a certificate and said he was a free man and could work for whom he pleased – I have not more than thirty-seven and a half cents profit on a pair of boots, sold by wholesale – I get my soal leather from Philadelphia – order work has always kept a number of journeymen in town – in purchasing large quantities of leather, some parts not so good, which is put into order

work – at the time of last turn-out, I had about one hundred and fifty pair of boots, which I had agreed to make – Beelen let me off with a less number. Bootees with buttons, sold for six dollars – to customers seven dollars – I found by the last prices, I could not make them without sinking one fourth of a dollar or thirty-seven and a half cents – they asked \$2.75 for making, my profit on these to customers, about one dollar – wholesale, from thirty-seven and a half to fifty cents – old prices for making \$2.25 – They made no difference between good and bad workmen, or between customer and order work – Gave me no previous notice, of their turn-out – last September first Tuesday morning, turned out against Phillips – Samuel Beler, Redmond, Greenland, Morrow, Webb, M'Dowell, Stewart, Rice, Johnston, M'Allister, Burnsides, Ward and Hood, came into my shop – some of them had three dollars worth of work finished, into a quarter of a dollar – some nearly finished, but none altogether finished – wanted to know the reason of this – at last Mr. Redmond observed to me, does not Mr. Phillips work with you – said he had been absent three meetings and not paid his dues – he thought I could settle the business myself with Mr. Phillips – I said, I would not interfere – they went away – some of them came back and said if Phillips would attend, they would have an extra meeting – that they did not wish to injure me – and that I could set all right – I had at that time a large number of orders on hand – I had urged them to work, and they must have known of the orders. I then privately went to Mr. Phillips, told him that they had brought in their work – advised him to go and meet them – he said he would – they cannot injure me, I know their laws better than they do themselves – they

can't injure me – said, if it were not for your advice, I never would go back – I wished him to meet them – next morning they took out their work and finished it – Phillips had attended their meeting – when they came in, Morrow was enraged against Phillips – I said, I understand you had not given him regular notice – afterwards Morrow came back and said it was not Phillips' fault but Anderson's – that he had not served the notice – Last three years we have made rapid sales – I never had more than two or three thousand dollars worth of work on hand at once – does not take a large capital to carry on the business – our average profit on the work done, is from fifteen to twenty-five per cent. – off-falls about one dollar a skin – last year I went to Philadelphia to make arrangements for getting [29] my work done there – I told Smith we would give the Philadelphia prices, and from the moment they would commence work they should be paid those prices – cossack boots sell in Philadelphia for \$12, there is a great deal of pains taken on the work – I sell them from ten to eleven – our work here is as good as in Philadelphia – from April last, my order work amounts to four or five thousand dollars – I make about two thirds order work – from sixteen to eighteen thousand dollars worth of work sent from Pittsburgh annually – about forty journeymen employed for the business – I have raised on the whole-sale, the neat tax. There never was any association to keep down the wages – we met to consult about giving the wages – have had a number of journeymen who had rather make feet than fit them – was benefitted by the resolution against boarding – had them at two dollars per week in fall of 1812, till next spring, it was too low – Anderson told me, they would all leave me on the first of April – they did



so, and paid  $\$2\frac{3}{4}$  – after last turn-out, we agreed to board the jurs at  $\$2\frac{1}{2}$ , and give them fire, candles, &c. agreed by all the employers – told this to Davis – said he had communicated it to them, and all was over – they would not agree to it. We pay twenty-five cents extra for inch heels. One Gold came to me who was sickly – they came to me, said he had been scabbed in Baltimore, and wished me not to employ him – he was working at full wages – I did not turn him off and they did not scab the shop – seen Cassedy in town just after turn-out – found Cassedy up in my shop, among my hands – he was talking about societies – afterwards heard him in a manner dispute with my jurs about benevolent societies – he justified societies.

(*Cross examined*) Dobbins frequently worked with me – always understood him to be a member – never any stand against Dobbins – he worked with society members – off-falls of twelve skins, ten or twelve dollars in value – price of best cossacks \$11.00 – Number of societies among the mechanics in this town – Philadelphia leather from twenty-seven to thirty-one cents – price of leather here, about thirty cents – numbers of employers don't go to Philadelphia – I could get soal leather here, good – don't know price of calf skins.

THOMAS RIDDLE, sworn. My father asked me to go up stairs – Cassedy was up there talking to my father's journeymen – he said he thought it strange, they should sit down so quick after coming to town, asked why they did not take a walk and see the town – one of them mentioned, he had seen enough of the town already – that he had seen better places than Pittsburgh – I made an observation, that it was well for some people, that they could walk about town to see it, after so lately coming to it – he made light of the observation – I said,



I had been in places where there were benevolent societies – and that such societies would not help them, unless they would help themselves. Cassedy then mentioned he did not know much about the society, [30] but supposed this would contribute something to a person in distress, if proper application was made – I said you need not care, you are not far from home – we argued on a good while, and my father came up and put an end to it – have seen nothing more of Cassedy.

JAMES GIBSON, sworn. I was in Riddle's shop one morning, a number of journeymen came in – paid no particular attention to them – heard Mr. Riddle reason with them – said it was all wrong; work was all unfinished. Riddle said they lost the work that was done, some more than half finished, some not half; spoke very calmly and so did Mr. Riddle, conduct was orderly, no threats.

ROBERT KERNS, on the part of the defendants, sworn. I am an employer; I give the prices for which they turned out – I have four journeymen at work now; I had another, Mr. Glenn; he left me. Prime cost of pair of boots for customers \$8.50, other ones not of so good a quality, I can cut at \$.50 or one dollar lower: in some articles I think the prices are fully high – some articles low enough – price of cossacks \$3.25, principally inch heels. Never asked any more for the heels. I find no fault with any articles except men's pumps; I think they are an 11d. higher than they ought to be; they are \$1.12½ – there are shoes in the store to sell, and we would have to raise a little, which would injure us. I understand that boarding is three dollars per week. I met with the employers in this place last fall (1814) – at one time we met at M'Clintock's called upon Mr. M'Fann to take the chair; motion was made

not to give any apprentice of a journeyman any work – agreed to. I never employed any afterwards. Met at M’Clintock’s two or three times – then adjourned to Fourth street. First night or two at M’Clintock’s, Mr. Riddle did not attend – He sent word by Mr. Johnson that he would agree to what a majority would do – Glenn said, Riddle might attend, that he would do as he had done, employ the best of the hands, and he had a notion to give the prices. Mr. M’Fann wished him to stay, and said if they would stick together they could keep down the jurs – in 1812 met in the diamond to fix among ourselves the prices of the work – it was proposed to appoint a committee to go round and inspect the work and fix the prices, and if any person sold under, they should be published in the three papers – heard it from M’Clintock and Mr. Webster, and I think from Mr. Douthitt, but not certain: I don’t recollect of making oath against the jurs last fall (1814) I paid five dollars to prosecute the journeymen – it is every man’s interest to keep down the wages as low as possible – M’Granahan scolded me for giving the wages. Meloney called on me with a bill of wages, I said I will not sign it; I don’t do a great deal of business, and my signing will not have much weight, but I will not be the last to do it. I buy my leather in Pittsburgh – at Mr. M’Clintock’s I was for sticking together – we had heard [31] that jurs had refused to work on boy’s fitting, and we would not give their apprentices work. I told M’Granahan I could stick out six months, I intended to go down the river. Dallas and Badgley, and Webb and Hughes were giving the wages – some of the journeymen were tramping out of town, and I was afraid if I did not give the wages I would not have a stock of work to go down the river.

JAMES DALLAS, sworn. We commenced the 3d Dec.

last; I came here in September, 1813, worked as a jur better than twelve months – worked about five weeks for Mr. Riddle and went to Johnston as foreman. We gave \$3 prior to the late turn-out, and \$3.25 since – I believe that employers can now give \$3.25, as well as give \$3 a year ago; when we concluded to give them, we calculated that some of the materials were cheaper, flour is lower, necessities of life are lower than a year ago – I think employers have as much profit now at \$3.25, as they had at \$3.00 a year ago. Plain cossacks \$3.25 – we sell Jackson bootees at \$8.00, bootees slit in front \$7.00. Have no journeymen at present – we rented a house from Spear and Eichbaum shortly after the turn-out a year ago; Riddle said if I went out of town, to take that creature Badgely along, for he could never get any work in town; he would not give him any, and Johnston and Douthitt would not. Last year we bought soal leather for \$33, now we give but \$30. I encouraged turn-out last year, opened a shop at that turn-out. I rather think John Dobbins is a member, he worked for me two or three months before the late turn-out – worked with other members without objection. Daniel Cassedy has demanded the present wages, but is not a member – said he was sorry he came to town. Just at the time he did, cossacks with inch heels and plates \$11.75, plain backstrap boots \$14.00, backstrap bootees \$14.00; plain cossacks cost \$3.25 in making.

HIRAM BADGELY, sworn. Mr. Dallas' statement is correct according to profits, as Mr. Dallas and I counted it, our profits are greater than at \$3.00 last year. We were told we could not have the house where we lived if we gave the prices – this was the reason why we discharged the journeymen.

WILLIAM EICHBAUM. Mr. Riddle and Glenn called on me and requested I would call and see whether Dallas and Badgely gave the wages; several other men who I believed were friends of Riddle's, called and said they understood that Dallas and Badgely were going to encourage the jurs – Dallas and Badgely said they did not belong to the society of master shoemakers, and therefore felt themselves at liberty to give what they pleased, and had not then determined to give the prices. We understood Mr. Riddle wished us to oust Dallas and Badgely, we were offered higher rent by Glenn, he offered two hundred dollars, we get one hundred dollars from Dallas and Badgely. I understood that Riddle and Glenn wished them out – Mr. Spear [32] and myself said, if those men acted correctly and did not deviate from the rules of the master shoemakers, they should have the preference. I asked Dallas and Badgely why they did not join the society of shoemakers? said they had not been invited. Riddle told me they had a society of master shoemakers, that they had meetings to regulate the prices – my understanding from Riddle was, that it was the same as the society of journeymen.

JOHN M'CLINTOCK, sworn. There was a society of master shoemakers about 2 or 3 weeks, I was secretary – minutes kept – I have not been an employer for more than two years, we fixed the prices of the work, under which we would not sell, there was some disturbance about under-selling, some would under-sell. We fixed a price to continue until we thought proper to reduce it; we all agreed, that them that was to under-sell or hoist the jurs off their seats, should be published in the Mercury and other papers. We signed a paper to that effect, my reason was, that some of them I could



not trust – no other penalty, one violated the rules, did nothing with him. I quit, this was in 1812; no resolution to keep down the jurs, I had great trouble with the jurs, had to handle them on my fingers' ends like babies in order to keep them at work.

MR. FORWARD for the Defendants. The defendants are indicted for a conspiracy, their association is alleged to have embraced a variety of objects; but that of raising their wages, is without doubt, the cause of the present prosecution. We heard of no conspiracy until their refusal to work at the old prices, that refusal was followed by an indictment preferred at the instance of the master shoemakers; they are the prosecutors, their joint contributions have brought to their aid the first talents in our country; their testimony has been given to procure a conviction; whatever name, therefore, is given to the indictment, its object is manifest. The combinations of the defendants to raise their wages is the crime; a return to their former masters the expected atonement. It will rest with you to decide whether such a combination is unlawful or not. None can deny the right of every man to affix his own price to his own labor; it is a right with which no court nor jury nor even the legislature ever dared to interfere; on what principle shall an act, lawful and innocent in one, become criminal from the concurrence of another? the defendants might, as individuals, demand what price they pleased for their work, is it a crime to agree that their prices shall be uniform? why is it a crime? are the prices too high? can you resolve this question? are you about to fix a maximum of prices? let the law be produced by which this despotic authority is conferred on a jury, your legislature disclaims it. You then are



precluded from saying that the demands of the journeymen were unjust; the rate of their [33] wages not being in any manner subject to your controul or interference. But the truth is, as I will presently shew you, the wages demanded, are reasonable, and the charge of extortion, utterly unfounded and ridiculous. It seems, however, there is something so horrible in a combination, to do either right or wrong, that the law cannot endure its existence; the prosecutors have carried their notions on this subject to such absurd lengths, as to condemn every association whatever; we are told that the same act, which, when performed by one, is innocent, becomes a crime by the agency of two or three, so that an association for the purpose of self-defence, or the suppression of fraud or injustice, must be ranked among indictable misdemeanors. This is a consequence fairly resulting from the principle contended for. The counsel for the prosecution, in order to bring the case within the favorite rule of the common law, have read a passage from 1 Hawkins *P. C.* page 328, which amounts to this, that a confederacy by indirect means to impoverish a third person or to maintain one another in any manner, whether it be true or false, is criminal. What is meant by "indirect means" to impoverish a third person, is easily ascertained by a reference to the case of the king against Kemberty and North, 1 *Sev.* 62, cited as an authority by Hawkins; an indictment for a conspiracy to indict J. S. for having begot a bastard child on the body of Mary North, with the intent to extort money from him, &c. In this case the end of the combination was extortion, and the "indirect means to impoverish" were calumny and falsehood. Another case is cited by Hawkins from the same book, page 126, information against Sterling and

seventeen others, brewers of London, for, that they did unlawfully conspire to impoverish the excise men, and made orders that no small beer called gallon beer, should be made, for such or so long a time, to be sold to the poor, and no ale but of such a price; with intent to move the common people to pull down the excise house and bring the excise men into the hatred of the people, and to impoverish and disable them from paying their rents to the king, &c. Defendants were found guilty of assembling and consulting to impoverish the excise men, and not guilty as to the residue. Lord Holt observes, in speaking of this case, 6 *Mod.* 100, "The case of Sterling was directly of a public nature, and the gist of the offence was its influence on the public, and not the conspiracy, for that must be put in execution." It was a government prosecution, arising out of an oppressive system of internal revenue in the worst of reigns, not instituted in the ordinary form of indictment, but by the information of the king's attorney. It is not in political prosecutions of king Charles the II. that we search for the liberal principles of the common law. If we are to recur to the reigns of the Stuarts for precedents, what species of absurd policy or high-handed oppression will not be introduced among us? what would you think of an indictment [34] in Pennsylvania for a combination not to distil whiskey, with a view to impoverish excise men, or not to drink whiskey, for the horrible purpose of disabling tavern keepers from paying their license? I would apprehend that the common law annexes no penalty to the practice of temperance, and that even a combination for that purpose would be no crime. The case cited by Hawkins from 9, Co. 56, was a civil suit brought by the plaintiff for a conspiracy falsely and

maliciously to charge him with robbery. In the third resolution of the court, a case is mentioned from 27 *Ass.* p. 44, "that two men were endicted for a confederacy, each to maintain the other, whether their matter be true or false, though nothing was put in execution, the parties were forced to answer it, because the thing is forbidden by the law." The authority of this case is not denied because the combination set at defiance the obligation of laws to which every citizen owes obedience. But the counsel for the prosecution have furnished you with a decision from 8 *Modern*, p. 10 and 11, which seems to have a direct bearing on the case before you, "several journeymen tailors of Cambridge were endicted for a conspiracy among themselves to raise their wages: being found guilty, a motion was made in arrest of judgment, and one error assigned was, that the endictment did not conclude against the form of the statute; for by the statute of George I. journeymen tailors were prohibited from entering into any contract or agreement for raising their wages, the court overruled the objection, because the endictment was for a conspiracy, which was an offence at common law." It is not necessary for our purpose to deny the authority of the book in question, although despised and reprobated by every court in Great Britain; we admit that a combination to effect an unlawful purpose or to effect a lawful purpose by unlawful means, is indictable, because the combination embracing the means as well as the end must necessarily be unlawful. The conspiracy of the journeymen tailors might have been punishable at common law, not for the reason assigned by the counsel in this case, that the common law prohibited all associations among journeymen for the regulation of their wages, but because the statutes of

England had fixed the rate of their wages and forbidden, under severe penalties, the demand of more. The purpose of the combination was therefore unlawful, and the case brought within the rule of the common law. This will appear sufficiently manifest, when we reflect that at the time the common law originated in England, if it ever did originate there, manufactures and the arts were unknown. The people but little removed from the state of the Barbarian, were employed in the profession of arms or in the business of a rude agriculture. They were probably as ignorant of the arts and mechanical trades, as the Sythians or Arabs. Nothing can be more absurd therefore than the opinion that the common law has at all times punished associations [35] among manufacturers for the regulation of their wages, no such association could have taken place until manufactures were introduced. Since that time the wages of workmen have been fixed by law and the demand or receipt of more, punished as a misdemeanor.

To give you an idea of the policy of the government in regard to the labors and mechanics of that country, I will refer you to some of the British statutes made for their regulation, Stat. 23, Ed. 3. Chap. 5. (passed in the year 1349) "Item that saddlers, skimmers, white tawers, cordwainers, tailors, smiths, carpenters, masons, tilers, ship-wrights and all other artificers and workmen, shall not take above the same that was wont to be paid to such persons the said twentieth year and other common years, next before as aforesaid, in the place where they shall happen to work, and if any man take any more, he shall be committed to the next jail, in manner as aforesaid," Stat. 25. Ed. 3. Chap. 1. The nature of this act will be evident from its title, "The year and day's wages of servants and laborers in Hus-



bandry.”<sup>1</sup> Chap. 2, of the same Statute, regulates the prices of threshing all sorts of corn by the quarter, &c. Chap. 3, fixes the wages of carpenters, masons, tilers, &c. Statute 2. Rich. 2. Chap. 8, confirms the Statute of 23, Ed. 3. and all other statutes of laborers, Stat. 13. Rich. 2. Chap. 7. The rates of laborers’ wages shall be assessed and proclaimed by the justices of the peace, and they shall assess the gain of the victualers, Stat. 26. Hen. 6. Chap. 3. (1427) ‘The justices of the peace, &c. shall assign the wages of artificers and workmen by proclamation.’ The Statute provides ‘that if any servant or workman do the contrary to such proclamation, and be thereof attainted, he shall forfeit to the king every time, the value of his wages, and if he have not whereof to make gree to the king, he shall have imprisonment forty days, without being let to bail or main prize in any manner.’ In the fifth year of Elizabeth, (1562) the Parliament of Great Britain, passed an act ‘containing divers orders for artificers, labourers, servants of husbandry and apprentices.’ By this act all former laws on the subject of laborers’ and mechanics’ wages, were repealed, and new and more specific regulations established. The tenth section enacts that the justices of the peace of every shire, riding or liberty, within their several commissions, or the most part of them, and the sheriff of that county, &c. shall at every general session after Easter, assemble together, and calling to themselves, such discreet and grave persons as they think meet, shall have authority to limit, rate and appoint the wages of laborers, artificers, handicrafts, men apprentices in husbandry, &c. by the year, day, week, month or otherwise, with meat and drink,

<sup>1</sup> By this Statute, mowers are allowed five pence per day, reapers of corn, in the first week of August, are allowed two pence per day, in the second three pence, and so till the end of August.



and [36] without meat and drink, and shall certify the said assessments into the court of chancery &c. The 19th section provides, that every person, that takes wages contrary to this Statute, shall suffer imprisonment twenty-one days. These Statutes with many others, not necessary to mention, develop in the clearest light, the absurd and tyrannical policy of the British government, in relation to the poor and labouring classes of the community. It is a policy, incompatible with the existence of freedom, and prostrates every right which distinguishes the citizen from the slave. It may subserve the interests of the capitalist and employer, but grinds to the earth a numerous class of people, from whose toil their wealth is obtained. Hence, the enormous inequality in the distribution of property in Great Britain, presenting the perpetual and disgusting contrast of equipage and rags, of luxury and starvation. I ask whether you are prepared to introduce the policy of the British government into Pennsylvania! suppose your legislature were to set about making laws, for regulating the price of labour, or for restraining the right of any citizen, or number of citizens to demand what they thought reasonable for their work. Is there a man in the commonwealth who would submit to it? we feel no hostility to the common law. So far as it comports with the freedom of our institutions, we will cherish and hold it fast – but this bastard common law, which is found only in British Statutes, and is fraught with mischief and oppression, we disown it, we will eternally resist its intrusion among us. Admitting, however, for the sake of agreement, that a combination of journeymen to raise the wages, was indictable at common law; is that part of the common law in force in Pennsylvania? I think you will agree with me, that it

is not adapted to our situation, or the nature of, our institutions; this alone is sufficient to exclude it: what is the evidence of the adoption of the common law in Pennsylvania? The acts of the legislature or authoritative judicial decisions; we have neither; where then is your authority for conviction? Will you repose your conscience upon British Statutes, or decisions founded upon them? But we are told of a case lately determined, which has naturalized this branch of the common law, and subjected the whole state to its dominion. In the Mayor's Court of Philadelphia, a number of journeymen shoemakers were endicted for a conspiracy, for the purpose, among other things, of raising their wages. (Here the material parts of the case were read.) The endictment stated, and the evidence proved that the objects of the combination were endeavoured to be carried into effect, by threats and violence. The means used to accomplish the end, were such as the law forbids, and the defendants were therefore guilty of an endictable offence. Is that the case here? where is the proof of threats or violence? no such fact is alleged in the endictment, nor established by the testimony. [37] When the judges of the Supreme Court, in obedience to a requisition of the legislature, were selecting such of the British Statutes, as were in force in Pennsylvania, or proper to be adopted, they must have seen and read an act of Parliament, made for cases like the present. The *Stat.* 2 and 3. Edw. 6. 15 Chap. Sec. 1. (1548) enacts, 'that if any artificers, workmen or laborers, do conspire, covenant, or promise together, or make any oaths, that they shall not make or do their work, but at a certain price or rate, or shall not enterprize or take upon them to finish what another hath begun, or shall not do but a certain work in a

day, or shall not work but at certain hours or times; that then every person so conspiring, covenanting, swearing or offending, shall forfeit for the first offence, ten pounds to the king's highness.' This act was under the inspection of the judges, its language must have arrested their attention, but they have decided, that it does not extend to Pennsylvania – they have not recommended its adoption; was it because it was declaratory of the common law? had that been the case, and the common law in force here, they would have reported this statute to the legislature, as they have done other declaratory statutes. The learned judges, considered, either that the alledged rule of common law, respecting conspiracies, had grown out of the acts of parliament in England, or that it was not applicable to our situation. When you find the legislature of your state, from its foundation to the present time, silent on the subject; when you find no adjudications of your higher courts recognizing the alarming principles held forth here. When you reflect that the subject must have been under the consideration of the highest judicial characters in the commonwealth; men eminently qualified and willing to do their duty; when you find such men giving an implied dissent from the principles contended for; I ask, whether you will risk the responsibility of a conviction? do you feel the same jealousy and horror of conspiracies, that was manifested by the judges, in the reign of Charles the second? are you prepared to say, that a combination is criminal, although its object be lawful and innocent? are you willing to interfere with the right of the defendants, to fix the price of their own labor and to choose their own employers? whence comes this recent dread of associations among the laboring classes! do the master manufacturers in our cities

and large towns, begin to feel that spirit which pervades the same class of men in Great Britain? I have said, and I repeat it, that it is intended by this prosecution, to establish the principle, that journeymen shoemakers cannot lawfully associate for the regulation of their prices. The prosecution was instituted notoriously on the ground of their demanding higher wages; it followed on the heels of the late turn-out, it would have vanished on their acceptance of the former prices; its object is therefore manifest, and can be neither disguised nor denied. [38] What would have been the condition of the journeymen, had their association never been formed? the testimony adduced by the employers themselves, furnishes to this question a satisfactory answer. Six or seven years ago, the journeymen, then working in Pittsburgh, found it necessary to unite together in a society, in order to effect a rise in their wages. Mr. Moreland, then one of the journeymen, but now an employer and a witness, admits expressly that the wages were too low: could they obtain fair prices by any other means than the association? no, it was not till a general turn-out was threatened, that the employers were brought to a sense of justice; since that period, there has been a perpetual conflict between the two parties; the labourers seeking to obtain a reasonable hire, and the employers struggling to withhold it. In the summer of 1812 there was a turn-out for wages. Phillips, a witness produced by the employers, proves that the wages demanded, were fair and reasonable, yet the shops of the employers were abandoned before they reluctantly agreed to give them. Even then, they were too low, as subsequent facts have abundantly demonstrated; for in the fall or winter following, there was another turn-out, \$2.75 a pair was demanded for



cossacks, and for other work a proportionate increase. Mr. Riddle at that time, seems to have been struck with the long suffering and forbearance of the journeymen; he came forward and honourably proposed to give them more than they demanded; instead of \$2.75 for cossocks, he allowed them \$3.00 and for other work in proportion. These circumstances, speak a language not to be misunderstood; they establish, beyond contradiction, the fact, that hitherto the employers had been in the wrong, and that the claims of the journeymen were fair and just. It will not be forgotten, that during all this time, the employers had been leagued together in a combination against their workmen—that they had met from time to time, to organize and invigorate a perpetual opposition to their demands. Whether the prices now required are reasonable, may be determined by a reference to the testimony. On this subject the declarations of Messrs. Dallas and Badgely, deserve the highest consideration. They are not parties to the coalition against the defendants, have made no sacrifices to procure their condemnation, and have no resentments to gratify; it is their decided opinion that the prices are reasonable. You find these prices paid by Hughes and Webb, two of the defendants, who have lately opened a shop, and commenced business on a small capital. They are given by Mr. Kerns, an employer, who declares on oath, that with the exception of fine shoes, he thinks they are not too high; his work is sold at the same rate as that of the other employers; but he can pay the journeymen their prices and have a handsome profit. The estimates made by the prosecutors themselves give them at the present prices a profit on their capital of at least seventy-five per cent. per annum. [39] Take their cossacks for



instance, which cost them at most, not more than \$8.75, and are sold to their customers at eleven dollars, frequently for cash in hand, and never at a longer credit than four months, enabling them to turn their money three or four times a year, you can make your own calculations. With this exorbitant profit the employers are not satisfied, even our sympathies are assailed with the story of their sufferings and their patience. Their shops are a desert, their business ruined, their bread snatched from their mouths, their customers hobbling barefooted through the streets; and all this complication of miseries occasioned by – what? why, these gentlemen forsooth, have jointly resolved not to do business at the very small profit of seventy-five per cent. per annum, on their capital. Lamentable destiny indeed! Were the journeymen under any contract or engagement to work for them? No. Was any civil obligation violated by their refusal so to do? No. Had the employers any right to their services more than to yours or mine? It is not pretended but they have committed the mortal sin of refusing to work when the employers refused to give them their wages. What a pity the prosecutors are not armed with the salutary vengeance of British statutes. The counsel will now find it necessary to tell you, that the reasonableness of the wages has nothing to do with the present inquiry – that your deliberations must be confined to the proofs of the conspiracy. But what becomes of this terrible conspiracy when its formation was a measure of self-defence, and its object just and innocent? What becomes of that part of the indictment which charges the defendants with combining to extort large sums of money from the employers? We are yet to learn by what kind of legal magic the receipt of reasonable

wages can be transformed into extortion. It will be said that the defendants compelled other journeymen to belong to their society, and to work at their prices; in what manner did they compel them? by threats? by blows? by opprobrious language? No. But should a journeyman join the employers in their endeavours to reduce the wages, they would not work with him. This is gravely urged as a serious offence by those who, in the same breath, admit their right to work for whom and with whom they thought proper. What injury was sustained by this frightful persecution of journeymen? do they complain? There is no man whose mind is above the distortion of interest or prejudice, but will acknowledge the benefits of this society to journeymen shoemakers; it enabled them to meet the employers on a footing of equality; protected the stranger from imposition; promoted mutual kindness, and gave a home to the disabled and the sick. That the views of the employers were often frustrated by the society, we do not deny; that the wages of the laborers in their shops, have been justly advanced by the combined agency of this society, we do not deny; but the imputation of fraud, or covin, or malice, is unfounded. [40] In every disagreement with the employers, you find the members conducting themselves with humility and decorum, and proceeding no farther than justice to themselves required. Journeymen not belonging to the society experienced the same good treatment. There is no complaint of violence or reproachful words; we have heard indeed, from the prosecutors, a great deal about the opprobrious epithet of "scab" they appear to consider the word as possessing a charm of irresistible potency, and every recurrence of it in the testimony, seemed to give an air of triumph to the prosecution.

Each witness was particularly interrogated, touching the use of this terrible word by the defendants. Unfortunately, however, for the prosecutors, it appears to have had no legitimate currency but among themselves, there is no proof of its having been applied by the defendants to any person whatever. But it had been useful in the trial at Philadelphia, and was intended to answer a valuable purpose here; whether you will suffer your judgments to be influenced by the parade of idle nicknames, is a matter to be determined by your verdict. Among the persecutions of workmen, by this intolerant society, the case of Smith, who, was working in jail for Mr. Riddle, some six or seven years ago, seems to be regarded as one of particular hardship. A turn-out was threatened by Moreland unless Smith was employed to work by the piece. It is sufficient to observe that Moreland was under no obligation to work for Riddle, or to assign any pretext for leaving his service. With the exception of Ward not one of the defendants belonged at that time to the society, and are not in justice responsible for the conduct of its members. The terms on which Smith was kept at work in prison have not appeared, but you don't find that he sustained any injury from the interference of Moreland, or expressed any resentment against the society. The case of the apprentices in the service of M'Fann, is not embraced in either count of the indictment, and is foreign to the present inquiry. In that case, however, the conduct of the defendants was free from turpitude or guilt; the young men were repeatedly told by several of the defendants, that they were under no obligation to conform to the rules of the society, and had a right to work for whom and for what price they pleased. Does this look like an attempt

to poison the minds of youth and dissolve the ties of filial duty and obedience? M'Fann's account of the poor shoemakers who came from Baltimore and were expelled hungry and ragged from Pittsburgh, is equally impertinent to the present inquiry, there is no proof that they ever saw any one of the defendants. By what rule of justice or humanity shall they be made to atone for evils of which they never heard until this extraordinary trial? But in what part of the indictment is this act of cruelty set forth? Are the defendants charged with preventing workmen from boarding with the employers? Why the disingenuous endeavor, by the excitement [41] of your feelings, to mislead your judgments? We are told that the members of this society have bound themselves to each other by oaths, but the making or breaking of such oaths is a matter of which the law takes no cognizance. They are placed on the same footing as an ordinary promise or engagement, and are to be referred to the end or purpose for which they were made. Did the defendants confederate by oath to do a public wrong, to extort money from the employers or others? to oppress journeymen? No. Do you think it indictable to engage by an oath not to work under a fair price, or to do a lawful act? You are called upon to convict the accused of an offence not to be found in the criminal code of Pennsylvania, to punish them for a breach of laws of which neither you nor they ever heard until this day. You are required to give the sanction of your verdict to a system of foreign policy which is alien from our institutions, our habits and our feelings. If you brand the defendants as criminals, prepare to exhibit to your fellow citizens the law by which your verdict shall be justified. They will not be satisfied with British statutes, nor



the political prosecutions of the kings of England. Their doubts and their fears are not to be removed by the sound of nicknames or the cry of extortion; they will ask of you whether they are freemen! . . .

Mr. Baldwin, for the prosecution, observed . . . that this was not the first prosecution of this kind that had been commenced in this country. That in New York and Philadelphia, points similar to those at issue had been decided – and that the English decisions for upwards of five hundred years had settled the principle. He said, that the learned counsel had employed their abilities in the conjuring up the phantom of the common law to alarm the consciences of the jury; that a great interest had been exerted by the cause at issue; for his own part, he considered it as a matter of fact, not a matter of law: that in his view of the subject, he would not invoke the aid of common law, he would be satisfied with that of common sense. He ought not, however, to permit an old friend, to [42] whom he owed his subsistence, to be too much abused. He would refer but to one book for its defence. He conceived that the venerable fathers of our constitution, the men who made us independent, were the proper oracles to whom to apply on such occasions; he would read them the words penned by Mr. Jefferson in the declaration of our independence.

Mr. Baldwin said, that he would lay down one broad simple rule, which he trusted the jury would abide by in their decision of this case. It was this, that any act is indictable which is against good morals, injures society, or is destructive to the trade of a place.

He trusted that every man was a freeman in this country – without a certificate from the journeymen

cordwainers of this place; as to the rules of this association, we must judge from the facts—we are prohibited from giving evidence of them—we are left to infer only that they will operate unfavorably to them from their not being willing to produce them. It has been said that this was a benevolent association. What their feelings were is evident from their conduct to the old man in jail; they would have permitted him to starve: for his own part, he said, that he had rather have been Riddle, administering the cup of charity to the poor prisoner, than Moreland, dashing it from his lips—and he believed the jury would coincide with him in that feeling.

Mr. B. then entered into an able and ingenious examination of the testimony, in which it was impracticable to follow him. He contended that the testimony either taken separately or together, proved beyond the possibility of doubt, that the influence of this association had been highly deleterious to the community; that it had caused among the poorer classes of shoemakers the utmost distress; that in more than one instance it had obliged journeymen to leave the place, from the impracticability of finding boarding or employment; that it placed out of circulation a very considerable capital, and had caused orders to an immense amount to be sent to other places to be filled; facts equally destructive to the best interests and the happiness of society; that, it had sapped the foundation of good morals, by introducing discord in families; that it dissolved the endearing and tender relations of life, by separating the sons from their parents; that the force of social affections which providence had intended to render indissoluble, had been forced asunder by the inquisitorial terrors of this association. That the apprentice by its rules was enabled to arm himself against

the authority of his master. If, (said Mr. B.) they undertake to regulate the wages of others, the act is unlawful, it is nefarious and diabolical if it prevents the extension of the hand of charity to the suffering prisoner. It is not raising wages by unlawful means, to subject to starvation every one not belonging to this society? I appeal not to common law, but to the law which is written in your hearts, [43] gentlemen, when I ask you if the whole tenor of this association has not been injurious to society, ruinous to individuals, destructive to morals and prejudicial to the trade of the place. These principles are not taken, gentlemen, from the statute law or common law of England; burn them as the defendants have, their constitution and the principles remain. A jury of Allegheny county have already settled them by their verdict—they have already said that they will set their faces against a confederacy of this nature.

Mr. Levy, a man who is a sound republican, who would set his face against any attempt to subvert the free constitution of his country, one whose opinion would pass at par in any place where his name is known, has maintained the same principles of good sense in a charge to the jury in Philadelphia, in a similar cause with the present. Throw aside then the statute and common law of England, throw aside the decisions of New York and Philadelphia, and consult the feelings of your own fellow citizens, and the conviction of your consciences; and then with the facts before you, say if you can, I had almost said, say if you dare, that the defendants are innocent.

Mr. Campbell, for the defendants, said, he rose under a confidence, that it would be best to confine himself to the prominent points in the cause. He believed

that all would admit that this was a novel prosecution. It was not his intention to controvert the legal position assumed by Mr. Baldwin, viz. that a conspiracy for carrying into effect an unlawful object or a lawful object by unlawful means, was indictable. No man in his senses will doubt the correctness of the rule. Mr. C. remarked, that this trial involved a great constitutional question, the right of personal privilege. I solemnly protest, said he, against the idea, that whether the object of this association be lawful or unlawful, it is a conspiracy. These men have been prosecuted because they have refused to labor at the wages fixed by the masters. Every aggravating circumstance has been pressed upon the jury. The present case is clearly distinguishable from the one which was tried in New York, and which is so much relied on by the learned counsel, for the prosecution. They have not associated, as they did in that case, for the purpose of compelling by threats and violence, all journeymen to unite with them, in opposition to all law and order. These men determined not to work under certain prices; this surely is not unlawful, they have a right to fix their own prices, and to publish their determination – they find it convenient, to come to a resolution, not to work for any employer who would not give the wages they fix upon, nor along side of any individual, who works for less – where, I would ask, in this country is the law to be found, which prevents any freeman [44] from saying, that he will not work under an established price, for such a person, or by the side of such a journeyman? was there any thing improper in inviting persons to enter into such an association, for such purposes? – the evil consequences resulting from it, were the fault of the masters, not of



the journeymen. Does the testimony, gentlemen, satisfy you, that they fixed their rate of wages too high? that their regulation interfered with journeymen coming to the place? or that they did not possess a right to make regulations (which were not compulsory upon others) for their own security? We know nothing of the rules of this society, except from Mr. Phillips; it was to have been hoped that measures buried in oblivion on the settlement of a previous prosecution, would not have been raked from their ashes for the purpose of carrying on the present one. But even under that constitution, neither the administering nor taking an oath is unlawful, that and the payment of the initiation money are merely voluntary acts, the result of free will, the result of contract. Had the constitution of this society been framed like those of the associations of journeymen shoemakers in New York and Philadelphia I would not have troubled the jury with a single remark, but a more particular reference to those constitutions, will result in a favourable comparison. (Mr. Campbell, went into a minute examination of the relative merits and demerits of those constitutions, and followed it by a lengthy examination of the testimony which had been offered to the jury). If, said Mr. Campbell the constitution had been produced, it would not have supported the indictment. Will it be said in a criminal cause, that the non-production of papers is an evidence of guilt? The presumption of law is always in favor of the accused. This is in truth, nothing more or less, than a struggle between the masters and journeymen of the town the latter of whom, are not to be permitted to raise their wages, and will not work below those they have thought proper to fix upon. It is said that the employers are obliged to stop, but if

their own obstinacy had not prevented their giving the proper wages, they might still have proceeded with their labor. (Mr. Campbell, here illustrated his observations by a number of apposite cases). With regard to the case of the Commonwealth *v.* Johnson, *et alii* which had been mentioned by the counsel who preceded him. Mr. C. said that he was unacquainted with the particulars, but that he could not but remark to the jury, that no judgment had been passed, notwithstanding the verdict. It was impossible for the jury to judge of the rectitude or propriety of that decision.

The only question for the jury to decide, is whether these men had a right to fix the price of their labor – have they in doing so, violated the laws of the land? I believe sufficient has been said to convince the jury that they cannot, under any existing law, convict the defendants. [45] If this be a public grievance, if this be a public evil, it is well worthy the attention of the legislature; but I shall solemnly enter my protest against a jury legislating in this country – inconvenience is no reason for throwing the burthen of legislation on a jury. If in England, endictments for similar offences, are drawn under a statute, not declaratory of the common law – if that statute be not, as it is not, in force here, then certainly the offence is not endictable in this commonwealth. The endictment is supported by no usage or adjudication, from the first settlement of this country, until the late trial in Philadelphia. It still remains then a question of expediency, not of law. Let the legislature then be petitioned upon the subject, if such proceeding should be thought necessary; but let the jury give such a verdict as will be consonant with those principles of the constitution, which every freeman holds dear – Mr. Campbell, in the course of his argu-

ment, quoted many cases and enforced many authorities, in support of the various legal points in the cause – but as they are quoted at large in the arguments of the other counsel and the charge of the court – the reporter has omitted them here.

Wm. Wilkins, Esq. for the prosecution, observed, That persons who had formerly been convicted in other places, came here for the purpose of forming new associations – he did not doubt, but that the jury would teach them a more proper course of conduct. The punishment would not be severe upon conviction, it would result in a light fine. If the defendants should be acquitted, the consequences are too obvious to every person to make it necessary to mention them here. (Mr. Wilkins went into a very lengthy investigation of the testimony; and read all the cases which had a bearing upon the subject.) He laid great stress upon the cases decided in New York and Philadelphia, which he conceived to be conclusive of the law upon the subject. He made some remarks upon the Statute law of England, which had been alluded to by Mr. Forward, and showed the jury the distinction between that and the common law. His address was concluded by an eloquent appeal to their understanding.

(The absence of Mr. Wilkins has unfortunately prevented the reporter from having recourse to his notes.)

[46] ROBERTS, *president*. The defendants are indicted for a conspiracy, which is defined to be a confederacy of two or more, by indirect (a) means to injure an individual, or to do any act, which is unlawful or prejudicial to the community. This definition is according to the common law.

In a prosecution of this kind, that occurred at New York, (which was argued with great ability and ingenuity) the counsel for the defendants laid considerable stress upon the definition of conspiracy, contained in the Statute 33. Ed. 1. St. 2. (b) and as that Statute has been held to be in affirmance of the common law, (c) he inferred, that cases not falling within that definition are not indictable at the common law. The report of that case, has been read and a like inference has been attempted, in the case before the court. The Statute referred to, was passed in the year 1304 – and purports to give “a definition of Conspirators” – “who be conspirators and who be champertors.” This definition, as it respects conspiracy, comprises, 1. confederacies, falsely and maliciously to indict. 2. Falsely to maintain pleas. 3. To cause children (d) within age, to appeal men of felony. 4. Of such as retain men in the country with liveries, or [47] fees to maintain their malicious enterprises, extending as well to the takers, as the givers. 5. And of stewards and bailiffs of great lords, which by their seigniory, office or power, undertake to bear, or maintain quarrels, pleas or debates that concern other parties, than such as touch the estate of their lords, or themselves.

Each of the offences comprehended in the definition, contained in the Statute, were doubtless conspiracies at the common law; but so, also, were others, not comprised in that definition. This Statute tends to confirm the remark of a most judicious commentator (e) – “That the common law hath been weakened” by the legislators’ making declarations against offences, “which were criminal by the common law, when properly understood.” Acts of parliament it is probable, were not unfrequently drawn by those who had not a legal educa-



tion. But however this might be, those declaratory Statutes were intended to enforce the laws against some prevalent grievance. We find from the history of those times, that the offence of champerty had arisen to so alarming a height, as to require the utmost exertions of the legislature to repress it. Early provision had been made against it in the Statute of Westminster the first C. XXV. (f) The 33. Edw. 1. St. 2. purporting to define the offence, was immediately succeeded by the Statute of champerty 33. Edw. 1. Stat. 3. (g) which subjected the champertor to three years imprisonment – and also gave the writ of conspiracy. (h) The offence of champerty, appears to have been a growing evil, for we find numerous subsequent Statutes directed against the same offence. The corruption of the judges, in those days, seems to have been such, that they were generally influenced in their determinations, when a man in power supported a law suit – for an offence then so common and inveterate, we hear of no prosecution at the present day. (i) It is probable that the several species of conspiracies enumerated in the Statutory definition, were those which prevailed at the period of its promulgation. They were the disorders of the state, which the Statute was designed to remedy.

The great change which has taken place since that early period, in the habits, manners and pursuits of the people has occasioned a corresponding change, in the offences which infest society. Hence the impracticability of declaring any particular branch of the common law, by Statute, so as to make the one [48] commensurate with the other. Such is the variety of occurrences, which from time to time, take place in society: crimes and offences are so infinitely varied, and complicated, that no legislative provision could anticipate them, or

sufficiently provide against them: but the common law affords ample provision. It abounds with principles, which, in their application, are calculated to attain and establish every right, and to redress every wrong, in a state of society. It is a system founded in reason: matured and corrected by constant investigation, and the decisions of learned men, through a succession of ages. It is not as some have ignorantly represented it, vague, uncertain and incomprehensible. Its principles are well known to every lawyer; though the application of those principles, to particular cases, may embarrass the most learned.

Sir Edward Coke remarks, that the common law "is founded upon reason; is the perfection of reason, acquired by long study and experience; and refined by learned men, in all ages." If he has said that "with increase of knowledge cometh doubt," the observation is applicable to every other branch of science, as well as to the common law. It was predicated on the idea entertained by the poet, in after times, who in relation to the imperfection of human wisdom, observes –

"'Tis but to know how little can be known,

To see each others wants, and feel our own."

Those who are capable of taking an enlarged and comprehensive view of any subject, will doubt, and decide with caution; whereas a partial, and contracted view of it, will produce a ready determination. In the temple of folly and ignorance, doubts seldom intrude. The votaries are self sufficient, positive and dogmatical.

In the investigation of subjects like that now presented to the court and jury, the mind is easily misled. We naturally look at the contending parties – here we see on the one hand, a number of journeymen, whom we are led to regard as poor men, opposed to their employ-

ers, some of whom are represented as wealthy. The human mind spontaneously revolts at the idea of oppression; and the attention of the jury is invariably drawn to this point; as if the true question were, whether the journeymen were the oppressed, and the masters the oppressors – whether the profits of the one class be not too great, and the remuneration of the other inadequate.

But it would be taking a very contracted, and by no means a just view of this case, to consider it as a controversy between the employers and the journeymen. And your time would be very unprofitably employed, in calculating the respective profits of the one or the other. With the regulations of wages, or the profit of the one or the other, you have nothing to do. It has been truly said that every man has a right to affix what price he [49] pleases on his labour. It is not for demanding high prices that these men are endicted, but for employing unlawful means to extort those prices. For using means prejudicial to the community. Confederacies of this kind have a most pernicious effect, as respects the community at large. They restrain trade: they tend to banish many artizans, and to oppress others. It is the interest of the public, and it is the right of every individual, that those who are skilled in any profession, art, or mystery, should be unrestrained in the exercise of it. It is peculiarly the interest of a trading and manufacturing town, (such as Pittsburg) that such freedom should exist. Without it, trade and manufactures cannot flourish; it is therefore important to all to cherish such freedom. A by-law restraining trade would be void. A by-law to prohibit journeymen shoemakers from residing in Pittsburgh, unless they should become members of and contribute to, a certain asso-

ciation; or unless they would work at certain prices; or prohibiting a master workman from employing whomsoever he pleased, would be ridiculously tyrannical. It would be void. If the municipality cannot thus restrain trade, or interfere with the rights of the citizens, shall such restraint be imposed by a combination of individuals?—Can that be lawful and right in the one, which would be tyrannical and void in the other?

A conspiracy to compel men to work, at certain prices, is doubtless endictable. It is a restraint of that freedom, which every citizen ought to enjoy, of affixing what price he pleases on his own labour. It is calculated to prevent improvements in the several arts: to depress the less skillful of the craft: to keep them from employment, and to prevent them from improving—Such combinations, whether formed by master workmen, by journeymen, or others, are unlawful and impolitic. So a conspiracy to compel an employer to hire only a certain description of persons, is endictable. It is a subversion of the liberty of the citizen. It has a direct tendency to restrain trade, and create a monopoly. A conspiracy to prevent a man from freely exercising his trade, or profession, in a particular place, is endictable. Also, it is an endictable offence, to conspire to compel men to become members of a particular association, or to contribute towards it.

The defendants are accused of conspiring, to accomplish all these unlawful objects—and it is for you to say, from the evidence exhibited to you, whether or not they are guilty.

In many cases of conspiracy, the means employed have a semblance of being lawful. They are frequently such as would be lawful in an individual. For instance, you have a right to have your boots, your coat, or your



hat made by whom you please. You may decline employing any particular shoemaker, tailor, or hatter, at your pleasure: You may advise your neighbors not to employ a particular mechanic. But should you combine and confederate with others, to ruin any particular shoemaker, [50] tailor, hatter, or other mechanic, or tradesman, by preventing persons from employing him, this would be unlawful and indictable. A spectator at a theatre might express his disapprobation of an actor, which is usually manifested by hissing, without committing any public offence. But if a number were to conspire, and confederate to ruin an actor; to prevent him from exercising his profession, by hissing him off the stage, this would be indictable. (k) You have been told, that a conspiracy to compel men to work at certain prices is indictable. Did the defendants conspire to do this?—On this head, you have had an abundance of evidence. But it is said that no threats or violence were used. Neither the one, or the other is necessary. The means employed here were no less effectual. They were such as coerced the party, with infinitely greater effect. No shoemaker dare receive one who worked under price; or who was not a member of the society. No master workman must give him any employment, under the penalty of losing all his workmen.

Did they conspire to compel an employer to hire a certain description of persons? If they did, they are indictable. On this subject the evidence is equally clear. They did not indeed threaten to beat the employer, nor to burn his shop. But the means they used were more efficient; and menaced him with a punishment more dreadful: no less than the total destruction of his trade, and the means of subsistence.

Did the defendants conspire to prevent a man from

freely exercising his trade in a particular place? If so, they are indictable. The testimony you have heard enables you readily to answer this question. They did not indeed drive, by personal violence, from the town, any stranger who happened to come into it: but they adopted means which must eventually drive a journeyman from the town, or immerse him in a jail. It would be mere mockery to say that a journeyman shoemaker (without becoming a member of the society) might exercise his trade freely, in Pittsburgh. Was it to be expected that any master workman would employ such stranger, when the consequence must be the ruin of his own business? No! The stranger must become a wretched wanderer, destitute of employment, and of the means of subsistence. Can any thing be imagined more prejudicial to the trade and prosperity of the town? It is the interest of the borough to promote the settlement of mechanics and manufacturers amongst them; and to prevent monopolies. Would it not be monstrous if a confederacy of individuals could exclude those whom it is so much the interest of the community to cherish? [51] shall they establish a monopoly necessarily prejudicial to the public?

As respects individuals, I consider the price which the journeymen may charge their employers, or the price at which those employers may vend their boots, of little consequence: if the citizens residing in this part of the country could not be supplied at a fair price, by mechanics in their neighborhood, they would obtain the article elsewhere, or it would be obtained for them. Boot and shoe shops would be opened, upon a scale sufficiently large to supply the consumption. These articles would be brought from Philadelphia, Baltimore, New York, Boston, and other parts of the union;

or if the manufacturers throughout the United States should be so blind to their own interest, as to approach extortion, importations from Europe would cause the price of the article to find its proper level.

We should indeed have abundance of the manufactured article; but we should cease to be the manufacturers. Is this a slight consideration in a manufacturing town? And can they be guiltless who enter into combinations which have a manifest tendency to produce such a result?

But in fact there are few classes of mechanics from whose disposition to extortion the people have less to dread, than from the master shoemakers, (if we were to suppose such an inclination to prevail amongst them) for the article in which they deal can so readily be supplied from distant places, at an expense so trifling, that demanding excessive prices would only tend to their ruin.

Did the defendants conspire to compel men to become members of a particular society, or to contribute towards it? If they did either they are indictable. That they did both, you have a mass of testimony. The means used was not in physical force, but exclusion from employment. The man and his family must famish or leave the place. If he became a member he must contribute to the support of this society, under the same severe penalty which awaited him, had he not become a member. It is immaterial whether the contributions were \$.06 or \$600 if they had a right to exact the one, they had equally a right to exact the other. If the journeymen might do this the master workmen might also do it. The absurdity and inconvenience of sanctioning such a doctrine, is too apparent to require a comment.

Combinations amongst master workmen, in any of the mechanical arts, tending to create a monopoly, or to restrain the entire freedom of trade, would be equally reprehensible with those under consideration. Indeed in such cases the combinations are no less prejudicial to many of the individuals composing them, than to the public. They may afford a monopoly to a few of those concerned; persons whose characters as workmen and as substantial men, are established, will benefit by [52] such associations, whilst the young mechanic and the stranger, whose talents are unknown, the moment they become members of such associations, under the specious name of master workman, they in fact enter into a state of vassalage; they almost inevitably become the journeymen and dependants of the other class. Whereas if they were at liberty to make their own contracts, and work at their own prices, opportunity would be afforded to display their skill and capacity as mechanics, and they would thus have a fair chance of placing themselves at the head of their profession or trade. In the character of journeymen, whatever skill and taste their work may display, is usually placed to the credit of the master.

Upon the whole, that this is an indictable offence at the common law, we have no doubt. It was never doubted but "that where divers persons confederate together by indirect means to impoverish or prejudice a third person, or to do acts unlawful or prejudicial to the community," they are indictable, at the common law, for a conspiracy. To decide this case then, put this question to yourselves "from the evidence we have heard are we satisfied, that the defendants did confederate together by indirect means to impoverish or prejudice a third person, or to do acts unlawful or



prejudicial to the community?" If you are satisfied that they did so confederate together, in all or any of the several ways which have been stated, you ought to find them guilty.

The jury found all the defendants guilty but ———, and the court fined them in one dollar each, and the costs of prosecution.

The name of Douglass as attorney general in the foregoing report would appear to be a mistake, as Jared Ingersoll held that office from 1811 to 1816. — Eds.



II. THE MASTER LADIES SHOEMAKERS,  
1821: COMMONWEALTH *V.* CARLISLE

Reported in Brightley's *Nisi Prius Cases*, 36.

[See vol. iii, page 16.]





III. NEW YORK HATTERS, 1823  
PEOPLE *V.* TREQUIER

Reported in 1 Wheeler's *Criminal Cases*, 142.

[See vol. iii, page 16.]



#### IV. THE BUFFALO TAILORS

From the *Buffalo Emporium*, Dec. 25, 1824.

We are induced to notice the following case, because it appears to be a novelty in our village, and has excited considerable discussion and interest among all classes. If the law be here as it is declared by our court and a very intelligent jury, it would certainly be proper that it should be so understood, for we view the rule to be general, and that it embraces every class of the community.

On Monday last all the journeymen tailors of the Village, had what they call a turn out for higher wages. They presented to their employers bills of the prices which they should demand in future for their labor, which not being allowed by their employers, they all left the shops, so that the tailoring business was entirely at a stand. On the next day several of the delinquents were brought before a court of special sessions, of which our first judge was a member, and put upon their trial for a conspiracy.

The assembling of the Jours. the forming of their bill of prices, (which were considerably advanced,) their combination and agreement that they should all leave their employment in case their demands were not complied with, and that each should bear a proportion of the expenses incident to the turn out, were proven on the part of the people. It also appears that the Master tailors had large engagements on hand for their customers, it being just before the holidays – and that every

Jour. in the place had left his employer. A singular custom among the Jours. to coerce the refractory was proved to exist throughout the United States, by which the person who should refuse to come into the measures of the majority, or who subsequently to a turn out should, before an arrangement was had, labor at the same place for less than the wages demanded, was stigmatized by an appropriate name, and rendered too infamous to be allowed to labor in any shop where his conduct should be known. And in case of such offenders, means were generally taken by the *flints* to give general information of the fact.

On the part of the prosecution it was insisted that every combination to injure one or more individuals or a class of citizens – or to do acts which are prejudicial to the community, was a conspiracy; and that Journeymen who refuse to work in consequence of a combination until their wages are raised, may be indicted for a conspiracy; that the combination together constituted the crime, and not the refusal to labour; decisions from the English courts and several cases decided in the city of New York were cited in support of that principle. For the Defendants it was contended that the doctrine of conspiracy as applicable to Journeymen standing out for wages as in this case, was not known at common law; that in England there was a special statute on the subject, which had never been adopted here; that the reason which in England led to the adoption of the statute did not exist here; and that to make the conduct of these defendants criminal, would be contrary to the genius of our institutions and an abridgement of our rights. The Jury after being out several hours, could not agree upon a verdict, and were discharged. A new Jury was impannelled, who after hearing the whole



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case, under the direction of the court, found the defendants guilty, and they were fined two dollars each.

Sheldon and White for prosecution; Smith and Shumway for Defendants.





TRIAL  
OF TWENTY-FOUR  
JOURNEYMEN TAILORS,

CHARGED WITH A

CONSPIRACY:

HEARD

THE MAYOR'S COURT

OF THE CITY OF

PHILADELPHIA,

*September Sessions, 1827.*

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REPORTED BY

MARCUS T. C. GOULD,

*Stenographer.*

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PHILADELPHIA:

1827.

V. TWENTY-FOUR JOURNEYMEN TAILORS, 1827: COMMONWEALTH v MOORE, *et al*

Reported by Marcus T. C. Gould.

[Title page] TRIAL OF TWENTY-FOUR JOURNEYMEN TAILORS, CHARGED WITH A CONSPIRACY: Before the Mayor's Court of the city of Philadelphia, September Sessions, 1827.

[2] NOTE. The subscriber thinks proper to remark, that owing to other unavoidable duties, he was unable to attend during the entire trial, of which the following is a report, and was therefore engaged to record the speeches only. It has since been his duty to present to the public in their present form, not only the speeches, but the testimony and other matters connected with the trial.

The testimony is published from the notes of Counsel, as taken at the time, and is considered substantially correct, though much condensed, and necessarily in broken style.

The speeches, it is believed, are a faithful report of the matter and language of their respective authors, to whom the subscriber is much indebted for the facilities afforded him on this occasion.

MARCUS T. GOULD.



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[5] IN THE MAYOR'S COURT, FOR THE CITY OF  
 PHILADELPHIA, SEPTEMBER SESSIONS, 1827

HON. JOSEPH REED, *recorder*, presiding. Sept. 18th.

Commonwealth, *vs.* John M. Moore, T. Radford,  
 J. D. Miller, W. M. Crous, H. Donahue, John Boner,  
 Michael Koons, James Beatty, William Scott, Thomas  
 Skeegs, Joseph Mead, J. Donley, Edward Conway, H.  
 M'Keever, J. M'Macken, L. Laboullés, B. E. Moore,  
 L. H. Wilson, James Wilson, Thomas Hough, J. Fulse,  
 J. Page, Jonathan Hough, Levi Bates, R. Hunter.—  
 Conspiracy.

COUNSEL FOR PROSECUTION. Joseph R. Ingersoll, Esq., John Wurts, Esq.

FOR THE DEFENDANTS. David Paul Brown, Esq., William B. Reed, Esq.

NAMES OF JURORS EMPANNELED, &c., Francis Cooper, Thomas Gray, Joseph Moss, John Reynolds, Thomas C. Percival, Samuel Hemple, Peter Mentzer, Joseph Evans, Thomas Simpson, John W. Simes, Peter Widdows, George Lloyd.

[6] ABSTRACT FROM THE INDICTMENT

1st Count, Charges the defendants, as journeymen in service of Robb & Winebrener, intending oppressively to increase their wages and the wages of others and unlawfully to extort great sums of money from Robb & Winebrener—with conspiring corruptly to demand for themselves and others, and from other master tailors who employed them, greater wages than were customary, and greater than paid by Robb & Winebrener and others.

1st Overt act. J. M. Moore, Radford, J. D. Miller, W. M. Crous, J. Beatty, Scott, Skeegs, Mead, Donley, Conway, M'Keever, M'Macken, Laboullés, B. E. Moore, L. H. Wilson, T. Hough, J. Wilson, J. Hough, J. Page; threatening to desist from work, and leave unfinished, work contracted for at the usual prices, unless Robb & Winebrener would pay more than the usual wages, which by reason of conspiracy they were compelled to do, until the work was finished.

2nd Overt act. To carry conspiracy into effect, Mead, Conway, Crous, Donley, Miller, Moore, M'Keever, M'Macken, B. E. Moore, Laboullés, L. H. Wilson, Beatty, Hough, and Page, did refuse to work for Robb & Winebrener, and did quit their service, because they would not retain in their service Radford, T.

Hough, James Wilson, T. Skeegs and Scott, at the usual rate of wages.

3rd Overt act. Defendants (as in 1st Count) to carry conspiracy into effect, assembled in the street near Robb & Winebrener's store, and intercepted persons in Robb & Winebrener's service, and endeavoured by promises to entice, and by [7] threats to intimidate such persons from Robb & Winebrener's service. Attack on Chamberlain, who was compelled to fly for safety to his house, whither he was followed in a turbulent and disorderly manner. Assault on John Shields, a journeyman of Robb & Winebrener's on his way home, and a threat to do him further violence if he continued in Robb & Winebrener's service.

4th Overt act. Defendants (as in 1st Count) to carry conspiracy into effect, did hold correspondence with other journeymen of Robb & Winebrener, and did endeavour by promises, offers of money, &c. to encourage such persons to quit their service; threatening to publish their names in newspapers and to do other acts to their injury, unless they would consent to quit Robb & Winebrener's service; and particularly by promises, offers of money, threats, and otherwise, did endeavour to induce Jacob Kline to quit Robb & Winebrener's service; and by like means to hinder work from being done for Robb & Winebrener in the shops of K. Jewel, Robert O'Neil, Jonathan Goodwin, and Francis Mahan, and especially by a threatening letter. (See indictment for letter.)

2nd Count. Defendants (as in 1st Count) not content, &c., but intending unjustly and oppressively to augment their wages and the wages of others, and to extort great sums of money for their labour, from Robb & Winebrener, and from others who employed them,

did unlawfully conspire, &c. to demand and obtain for themselves and other workmen of Robb & Winebrener, greater wages.

3rd Count. Conspiring to re-employ T. Radford, T. Hough, James Wilson, Thomas Skeegs, and William Scott, who had been dismissed for demanding greater than the usual wages, paid by Robb & Winebrener and others.

1st Overt act. To carry conspiracy into effect J. M. Moore, J. D. Miller, J. Mead, E. Conway, W. M. Crous, H. M'Keever, J. M'Macken, L. Laboullés, B. E. Moore, L. H. Wilson, J. Beatty, and Jonathan Hough, did threaten Robb & Winebrener not to work for them unless they would re-employ Radford, Thomas Hough, James Wilson, Skeegs, and Scott, [8] and because Robb & Winebrener did refuse to do so, Moore, &c., did refuse to work for them, and did quit their service.

2nd Overt act corresponds to 2nd overt act, Count I.

3rd Overt act, Same as 4th overt act, Count I. Letter to Goodwin described but not inserted.

4th Count, Same as Count III. No overt act.

5th Count, Conspiracy to injure, disturb, and obstruct Robb & Winebrener in their business.

1st Overt act, Same as 3rd overt act, Count I.

2nd Overt act, Same as 4th overt act, Count I.

6th Count, Same as Count V. No overt act.

7th Count, Conspiracy to injure and oppress Chamberlain, Kline, Shields, Goodwin, Jewell, Mahan and others, in Robb & Winebrener's service.

1st Overt act. Intercept and interrupt said persons and others in service of Robb & Winebrener in prosecution of their business; threat to publish names, and to do bodily injury if they continued in Robb & Wine-



brener's service. Attack on Chamberlain. Assault on Shields – Letter to Goodwin.

8th Count, Same as Count VII. No overt act.

[9] OPENING SPEECH OF MR. WURTS

If the Court please, Gentlemen of the Jury. This is an Indictment against John M. Moore, [and others,] all of whom are journeymen tailors. The offence with which they are charged is that of a conspiracy. What in point of law constitute, this offence, is a matter about which, I apprehend, there will not be much difference of opinion between the counsel engaged on either side of this cause. Be that as it may, however, I deem it unnecessary in this stage of the prosecution, to do more than indicate the principles for which we shall contend on the part of the Commonwealth.

Without turning to books, therefore, or detaining you by an elaborate exposition of the law on the subject of conspiracies, we assume at once, that "All confederacies wrongfully to prejudice another are misdemeanours at common law, whether the intention be to injure his person, his property, or his character."

"A combination is a conspiracy in law, whenever the act to be done, has a necessary tendency to prejudice the public or oppress individuals, by unjustly subjecting them to the power of the confederates, and giving effect to the purposes of the latter, whether of extortion or of mischief."

These are principles well settled; because plainly deducible from acknowledged authorities and approved decisions upon [10] the subject; they will be found particularly applicable to the case which you have been empaneled to try.

The Indictment contains eight counts, presenting however for your consideration, but four distinct, sub-

stantive, and independent charges. The first count charges the defendants with having unlawfully conspired and confederated to exact and extort from Messrs. Robb & Winebrener and other master tailors, higher wages than were usually paid to journeymen tailors in the City of Philadelphia. Under this Count a variety of overt acts are set forth, as the means adopted by the defendants to accomplish the objects of the conspiracy; and, as much of the evidence, to which you will hereafter be expected to listen, is there stated with precision, I beg your attention, while I read to you this part of the Indictment. (Mr. Wurts here read the statement of the overt acts; but as the facts which it sets forth, are substantially enumerated in his subsequent exposition of the evidence to be adduced on the part of the prosecution, it is deemed unnecessary to give this part of the indictment at length.) The second count contains precisely the same charge as the first, omitting the specification of overt acts.

The third count charges the defendants and other persons unknown, with having unlawfully conspired and combined to compel and oblige Messrs. Robb & Winebrener, master tailors, to re-employ and receive again into their service five of the defendants, namely, Thomas Radford, Thomas Hough, James Wilson, Thomas Skeegs and William Scott, who had been theretofore dismissed and discharged from their service and employment, by Messrs. Robb & Winebrener, because they had required and demanded more than the usual rate of wages. Under this count there is, substantially, the same specification of overt acts, that I have read to you under the first. The fourth count is like the third, ommitting the overt acts.

The fifth count alleges that the defendants, with

other persons unknown, unlawfully conspired and combined to injure, embarrass, oppress, hinder, disturb, and obstruct Messrs. Robb & Winebrener in the prosecution of their lawful calling and business: setting forth the same overt acts as are detailed under the first and third counts. The sixth count contains the same charge, omitting the overt acts.

[11] The seventh count charges them with a conspiracy to injure and oppress Lewis J. Chamberlin, Jacob Kline, John Shields, Jonathan Goodwin, Kenneth Jewell, Francis Mahan and other workmen and journeymen in the service of Messrs. Robb & Winebrener; with a specification of overt acts, as in the preceding counts. The eighth count contains the same charge, omitting the overt acts. . . .

I will briefly state the facts which I understand will be proved by witnesses to be called on behalf of the prosecution.

Early in the month of August, all these defendants, except Donahue, Boner, Koons, Fulse, Bates, and Hunter, were in the employment of Messrs. Robb & Winebrener as journeymen tailors. About the 7th or 8th of that month, two of their number, Benjamin E. Moore and James Beatty, came down from the workshop into the store, and presenting themselves to Messrs. Robb & Winebrener as a committee or deputation from the workmen up stairs, said that for a particular kind of work, in which some of them were then engaged, the price paid was too low,—that it was less than was paid for similar work by the Messrs. Watsons, and that they must have a certain sum which they named. As reference was made to the Messrs. Watsons, Messrs. Robb & Winebrener inquired of them, and found the representation incorrect. To avoid difficulty, however,

they told the men that the price demanded would be paid for the work then in hand. When it was finished and those who had done it came to receive their wages, the sum required by them was paid, and they were told that Messrs. Robb & Winebrener had no further occasion for their services. They were Thomas Radford, Thomas Hough, James Wilson, and Thomas Skeegs. William Scott had gone into the country, but he was considered as discharged also.

[12] A short time, perhaps a week, after this took place, the remaining fourteen journeymen, who are charged in this Indictment, namely, John M. Moore, Crouse, Mead, Donley, Conway, M'Keever, M'Macken, Laboullés, L. H. Wilson, Miller, Page, Jonathan Hough, Benjamin E. Moore, and Beatty, came down in a body from the workshop to the store, with their unfinished work in their hands, and said, that unless the discharged workmen were re-employed, they would not finish their work, but would all quit immediately. Mr. Winebrener told them, that he conceived, he had a right to employ whom he pleased – that the discharged men did not suit him, and he would not again employ them – that the work which they had brought down, they had contracted to finish by a certain time – that they had better finish it, and then if they thought proper to go, it was well – but if they threw it up, they would be held responsible for the consequences. They all however threw their unfinished work upon the counter, left the store, and never returned.

And here, gentlemen, this matter would have ended, and you would never have heard of this Indictment, if the defendants had been satisfied with what they had done, and pushed their measures no farther. It is



obvious, that the disappointment and, for the time being, the total interruption of business, to which they so unexpectedly and wantonly subjected Messrs. Robb & Winebrener, must have been productive of very injurious and mischievous consequences to them. It is equally certain, that in so doing, these defendants subjected themselves to all the consequences of this prosecution. Still, however, Messrs. Robb & Winebrener would not have resorted to it, had not the subsequent measures of the defendants, rendered it necessary as an act of self defence on the part of these gentlemen. You will now find the future conduct of the defendants towards them, marked by the most vindictive and malignant feelings, and therefore containing an essential ingredient of crime. Their subsequent operations appear to have been the result of a deliberate and settled resolution, that no work should be done for Robb & Winebrener by any person, if their joint efforts could prevent it. And in the execution of this purpose, we shall be able to show you the active agency and co-operation [13] of the six defendants, who never had been in the service of Robb & Winebrener.

To accomplish the object which the defendants had now in view, it became necessary for them to ascertain who were the new journeymen employed by Robb & Winebrener, and what master-tailors had undertaken to assist them in completing the work thus thrown unfinished on their hands. To effect this, it will be shown to you, that all the defendants were in the habit of assembling from day to day near the store of Robb & Winebrener, taking their stations at different points for the purpose of reconnoitering, and maintaining a regular system of espionage, so as to identify, and if necessary to overhaul all who passed into and out



of the establishment. Upon this duty they seem to have been regularly detailed from day to day, as it was their practice to relieve each other at certain intervals. On one occasion a party of them was observed in the rear of the building, reconnoitering the workshops with a telescope, evidently for the purpose of ascertaining who were the new journeymen, by whom their places had been supplied. When the individual whose business it was to carry out work, left the shop, some one or more of the individuals on guard, was despatched to dog him, and ascertain where he left it. This occurred daily and at all hours of the day.

Having thus ascertained who the new hands were, and to what master tailors work had been sent, they now took measures to intimidate or entice them from the employment of Robb & Winebrener. On one occasion, Mr. Chamberlain, a new journeyman, was followed and overtaken on his way home by Boner, who was soon joined by Fulse, another of the defendants, when they commenced a conversation about his working for Robb & Winebrener. They expressed their surprise and disapprobation at his so doing. He maintained his right to work for whom he pleased. This soon led to language which alarmed him, as it was in the dusk of the evening, and Fulse had something in his hand with which Chamberlain believed he intended to strike him. He stepped before Chamberlain to stop him. Boner touched him on the arm and said, "not yet, keep off," and beckoned to three men who were coming up behind them. They advanced rapidly on him, [14] when finding himself likely to be surrounded by them, he fled across the street to Mr. Burden's, they called after him to stop. John M. Moore and Donahue were two of the three who came up when Boner

beckoned. He informed Mr. Burden that the men on the opposite side of the street were lying in wait for him and that he deemed it unsafe to go home alone.

(The Court adjourned till half past 3 o'clock.)

The Court having again met at half past 3 o'clock, Mr. Wurts resumed his opening by a brief recapitulation, in which he said, that the shop of Messrs. Robb & Winebrener had been placed under the ban of this confederacy, or in their own language, that they "had scabbed the shop." While Mr. Chamberlain, remained at Mr. Burden's, the five men who had pursued him into the house were lurking about, and waiting for his re-appearance. Donahue crossed over and passed up and down by the door several times evidently with a view of ascertaining the movements within. Mr. Burden sent for a peace officer who accompanied Chamberlain home, followed in a turbulent manner by these men and others who joined them.

On another occasion, some of the defendants intercepted Robert Shields, (also a new journeyman) when on his way home in the evening. They laid violent hands on him, and after having done so, told him that they would let him pass for that time, but if they ever caught him again in the employment of Robb & Winebrener, the consequences would be very serious to him. Where these means failed, others were resorted to. Koons, one of the defendants, went to the workshop and told Kline, one of the new hands, that the former journeymen had struck; that it was therefore wrong for any one to work for Robb & Winebrener, as the journeymen should stick together; that he and his fellow workmen need not be apprehensive of suffering by joining the confederacy; for that, if they would come to M'Guire's, a tavern in Library Street, they

should have money to support them while out of employment. If they did not quit work and come there at the hour named, Koons assured him that all their names would be procured and published in all the newspapers; and they should be disgraced and made to repent of their obstinacy. He requested Kline to communicate the same to his fellows.

[15] By these and similar means the confederates actually succeeded in frightening or seducing Shields and some others, from the service of Messrs. Robb & Winebrener, and thus rendered it very difficult for them to retain a journeyman in their employment.

But they did not stop here. Having ascertained who were the master tailors, to whom work had been sent by Robb & Winebrener, they adopted measures to prevent its being done. They sent three of their number to Mr. O'Neil, told him they had struck, that it was wrong for him to aid Robb & Winebrener, that by so doing he was injuring the journeymen and himself too; and employed a variety of arguments which he will detail to you, to induce him to send back the work unfinished. He however declined doing so. In other instances they were more successful. They went to the shops of Mr. Jewell and Mr. Mahan, and prevailed upon the journeymen in these two establishments to refuse to do any work, so long as these gentlemen received work from Robb & Winebrener. The journeymen struck at both places. Mr. Jewell was compelled to send the work back unfinished, before his journeymen would do any thing. And Mr. Mahan sent one of his apprentices elsewhere to finish the work which he had in hand. To Mr. Goodwin they sent the letter which has been read to you as set forth in the indictment, threatening to burn his house and disperse his family.

How far we shall be able to show the agency of the journeymen tailors' society in this matter, we are not now able to say. But it is probable that in the course of the testimony, there will be other important facts developed in addition to those I have mentioned. If however we should prove only those which I have mentioned, I think you will be prepared to say with me, that these defendants have been guilty of a very serious offence, not only against the individuals who have been the immediate sufferers by the conspiracy, but against the peace and welfare of the community generally.

[16] DAVID WINEBRENER, sworn. All named in Indictment except Donahue, Boner, Koons, Fulse, Bates and Hunter were in my employ early in August last. The first week in August, we put in hand, a lady's riding habit, to be made by four or five hands, of thin pongee. When the dress was to be paid for on Saturday night, we told the men it came under the head of thin work, as it did not come under the notice of the Bill of Prices, but that it corresponded to gentlemen's coats or coatees. This was denied by the men. The person for whom it was made was a young, small person. These journeymen were Beatty, Radford, T. Hough, J. Wilson, Skeegs, and Scott. We said we would inquire at other shops and sent to C. Watson's. At last we told these men we would pay them what they asked – that they had deceived us in telling us that the Watson's had paid prices which they had not, and we had no farther occasion for their services. We viewed them as contentious men, and dismissed them. One of them, I do not know which, asked reasons for dismissal. We told him no matter, we did not wish his



services any longer. On the morning of the 14th, the men, fourteen I believe in number, came into the shop with their work unfinished in their hands. They advanced to me. I think M'Macken spoke; he said they would not finish their work until the men dismissed were restored. I replied "Gentlemen, I hope you will not leave your work unfinished; I hope you will finish what you have engaged to do; you have all got work to be done at a certain time; you had better finish the work and then leave us, since if you do not finish it, it will naturally injure us. You have entered into contracts, and if you fail, we will prosecute you for it." One or two, I know not who, replied they would not work until the others were reinstated. They talked the thing over for a few minutes, and at last all threw down their work. I said to Mr. Robb, "William, take down the names of all who have work." They heard me. They were at this time going out at the back-door. I had warrants issued against them by Alderman Binns, that and the next day. The parties all met at Mr. Binns'. Mr. Binns asked them if they would not go back and finish their work. None spoke. He asked them why they did not finish the work. None spoke. He then asked them individually, and they replied individually that they would not return to their work. It was a civil suit before Mr. Binns for damages. I went home. They from that moment collected in squads about the store, apparently at all corners of the house. This was on Tuesday, the 14th or 15th. We sent our runner, C. Ramsay, out with work. He was followed by the men at the different corners. In one instance on Thursday, sent him up town, at which time Mr. Radford left the corner, and followed him him up Third St. I saw him follow. I went to the



corner to see if Radford was in pursuit—he was. I followed [17] them. He followed Ramsay four or five squares. Radford looked round and saw me, or appeared to see me, and stepped behind a watch-box. When he stopped, I returned home. He soon returned to the corner. We worked on that week. On account of their interfering, very little was done. I sent a coat to Mr. Jewel to make.

On the week after, L. I. Chamberlain came to work for us. Several evenings when he was going home, I watched at my door and these men always seemed to accompany him. Several times quite a crowd round them. They called him names. Chamberlain seemed not to notice them. On Saturday, Chamberlain left the store at dusk. I went to Mr. Burden's, having been sent for. I went down and overtook Chamberlain with a crowd round him, near the corner of Third and South streets. I asked Chamberlain, if he could recognise any one of those who had molested him. I saw several who had been at the corners. He pointed out Boner and Moore (J. M. the smaller,) and Donahue—I saw them in the crowd. Chamberlain said those persons had followed him and driven him into Burden's. I said to Boner "My friend, you had better pass off home, for fear of getting into trouble." They followed us about a square. "Is it me you mean, sir?" said he. "Yes," says Chamberlain, "I mean you; you have caused me to be molested as I have been." We were going to Chamberlain's. Boner said he was a liar, and came close up to my right. I advised him to go off, and told him he should not molest me or my man. He swore he would go when he pleased and follow as long as he pleased. He was close to me. I gave him a shove, and told him he should follow us no farther.

He then raised his cane to strike me. I parried his blow and struck him over the head and knocked his hat off. One of them, Moore, said "now we have him, damn him. He has struck you; now we will have him arrested." We then went to Chamberlain's house and left him. They followed us near his door, and then scattered off. I went home, and that evening was arrested for the assault on Boner. It passed on until Monday. We had warrants for conspiracy against Boner, Moore, and I believe Donahue.

The next week we got a good many new hands. On Saturday of the week when the difficulty occurred, we sent to our men to come for any thing they had left at our store. For two weeks they were round the store. I asked Mr. Radford once, whether he was not tired standing guard, and added, he must have a hard time. He said no, not for three or four weeks to come. Mr. Robert Hunter and Mr. Boner, I observed, took no active part about our store or workmen; but all the rest did, from the time they commenced it, until the eventual close of it. We had much difficulty in getting workmen. I went to Alderman Badger. (Here stopped.)

The difficulty about the habit, occurred after it was finished. [18] The committee that came down was B. Moore and Beatty. They said they were deputed as a committee from the upper shop, to inform us that if we did not pay as much for a thin as a thick riding habit, they would all strike. When they came down with work under their arms, I said, "it is a new scene for workmen to compel us to employ men we no longer want. I hoped we were at liberty to employ whom we thought proper. If they chose to leave us in a body who dare say no." The price demanded for the

habit was higher than the usual price. It was smaller and thinner. I inquired among other tailors. Beatty was one of the men discharged, I think.

*Cross examined* by Mr. Brown. . . The dress made by the men was a lady's riding habit; I believe of silk and cotton Pongee. There were skirts to it. I presume there was a vent at the sleeves, and I believe, but I am not sure, whether there was wadding – there was a small skirt – there are Hussar skirts of various kinds. I do not know whether there was a fly or not. I had a bill of prices. That is the general bill which governs some prices, and others it does not. All the prices in the bill are governed by the bill. There is no doubt of it. I have seen such bills in my shop. I have never seen bills in other parts of the house. The man who pays wages has one by which he pays. There is no difference between thin and thick pantaloons, unless differently made. The habit was not made and trimmed in cloth fashion – only difference no wadding – I presume there are not more seams in thin than thick dresses. Width of pongee is half a yard, habit cloth yard and half. I had made no inquiries before refusing to pay for the habit. This bill governs some establishments in this city as far as it goes.

[19] The matter was settled a few days after the difficulty occurred. I offered somewhere about six dollars. My clerk made out the price for full extras. I never saw my clerk's bill. He told me the habit came to so much. The difference between us was about one dollar. I do not know that there is any difference in the bill between thin and thick habits. I think Mr. Radford made part of a coat after the difficulty. I received for making and trimming the habit, two dollars less than for a cloth one. The charge for making and

trimming is twelve, if cloth fourteen dollars. Before the institution of these proceedings, I never did myself inquire about prices among the master tailors. I can not say why I refused to answer the question of the committee. I can not say which of the two asked me the question. When the fourteen came with their work, they made no complaint about a reduction of wages. I gave them no reason but our right for discharging the five. I told the fourteen they had a right to go. I can not, without reference, recollect the fourteen. I do not think Beatty was in the store then. I saw Beatty keeping guard at the corners. I sued thirteen or fourteen for damages, somewhere thereaways. I sued only those at work—I am under an impression that fourteen had work. I think M'Macken spoke. I saw, that round the store (referring to the memorandum,) Boner took no part, nor Hunter. I saw Mr. Skeegs take the most active part in keeping guard. I do not think I dismissed the charge against Skeegs, nor Bates, nor Scott. They were charged and bound over on the charge of conspiracy, and gave bail. I now say there was no charges against those three. There was a complaint by one of the counsel of harsh treatment, and I consented to their own individual responsibility. I think this was at the second meeting before Alderman Barker. There were, I think, twelve bound over. At the time, I had a memorandum of the names. I do not know where it is—this is a copy. Those about the door followed my men. I noticed none but Radford, except in Chamberlain's case. Radford did not speak to, nor touch my man, nor did I speak to him; he only walked after and went behind the box. I spoke once to Radford near my house,—no one else. Perhaps I did speak to Skeegs and Conway. [20] I never



threatened them, nor shook my yard stick. I did not indict Boner before he indicted me. I saw the others, Donahue &c., following us. I said first to Boner, "My friend," &c., (see above.) I think they could have heard Chamberlain speak. There was some noise. Boner said, "Is it me you mean?" I think, but do not know, Boner works for C. Watson. I am certain I never saw Boner in their company. He is a cripple. I have never called on J. Thompson, to compromise this business. I desired to settle the matter. I never promised to strike him out of the conspiracy suit. I thought Boner had left a message with Thompson. I did not request Thompson to delay the return. The conversation with Thompson was last week. I heard some one, I do not know who, call Chamberlain hard names. They were hooting and whistling as he passed. I have been bound over by Moore.

By Mr. Wurts. . . Moore bound me over since the binding over for the conspiracy. Mr. Wurts instructed me to go to J. Thompson, in order to have Boner bound over for an attempt at an assault with a stick. For this purpose I applied to Thompson. He made the offer of a compromise. Before Alderman Barker I did not propose to withdraw the prosecution against Bates, Scott and Skeegs—I only wished their personal recognisance.

By the Court. J. M. Moore went up among my new workmen, he was continually in the street. Radford was very active. J. E. Miller was active in street. Crous was active in street—came down with work. Donahue, was active in Chamberlain's affair. Boner, do. do. Koons I did not see in the street. Beatty, one of the men discharged—first active in the street. Scott, in the street. Skeegs, in the street. Mead, do. Donley,



do. Conway, do. M'Keever, do. M'Macken, do. Laboullés, do. B. M. Moore, do. L. H. Wilson, do. I saw all these. [21] Fulse, nothing against him personally. John Page, active in the street. Jonathan Hough, active in street. L. Bates, active in street. Hunter. I saw them after being bound over. T. Hough, active in street. James Wilson, active in street. I saw them after being bound over. The first bound over, were Boner, Moore, Fulse, Hunter, and Radford—the others I can not recollect. My reasons for not arresting others were, that they were not so active. I had none of them arrested for conspiracy until they had arrested me. I said the prosecution would depend on their good, or bad behaviour.

By Mr. Brown. I can not point out all the names of men in Court. I do not know whether I know Fulse or not.

(Court adjourned at 7 o'clock.)

Sept. 19th, Court met at 10 o'clock.

LEWIS J. CHAMBERLAIN, sworn. Tailor by business in Robb & Winebrener's service; commenced with them 21st of August. On Saturday afternoon, 23rd, I was on my way home, near Gerard's bank. Boner crossed from Watson's alley—spoke to me—asked me if I was not in Robb & Winebrener's service, I told him yes—he said to me, why did you not come to work at our establishment? I told him I had a situation with Robb & Winebrener, and I did not wish to change, and that if I could still hold such a situation, I would return to my shop. He asked me if I did not know it was wrong to work for them, the men having left the shop. I told him I did not know; that not having belonged to the society for two or three

years, I thought I was at liberty to work for whom I pleased. We were by this time near Walnut Street. Mr. Fulse came up to me and said, "I understand you have my old situation at James's." I told him no, I had not; that I was with Robb & Winebrener; had been with James. He asked me if I did not know it was wrong, &c. I replied no; I thought I was at liberty, &c. He stepped before Boner, and in the act of stepping before him, Boner hunched him and said "not yet." Mr. Fulse had something in his hand about twelve inches long. When Boner hunched Fulse, I heard it and felt alarmed. I saw Boner beckon to three men behind. The three came up. Fulse was before me; Boner close to me. Three had come up. I ran across from the five into Burden's. I told Burden those five (showing them) intended injuring me. I [22] wished to put myself under his protection. Donahue came across from the five, passed the door and looked in. I told Burden that was one. Burden went to the door to look. Donahue passed on. Burden sent for Winebrener. Three of the men were near the big tree. In about half an hour Mr. Ross came down with Mr. Binns and an officer. Mr. Binns went home, he told us to go on, he would follow us. At Third and South Streets, Winebrener, joined us. I pointed out to Mr. Winebrener, I think, J. Moore, Donahue, and Boner. The Constable and Winebrener told them they had better not molest me. They made some reply. We passed on. Boner came up close to Winebrener—the rest close behind. Winebrener told him, "my friend, you had better go away," &c. Boner said he would go when he pleased. Winebrener replied. Boner came up close. Winebrener said keep off. Boner after some conversation, came close and said, he'd be damned

if he would keep off. Winebrener said, "keep off." Boner raised his stick. Winebrener parried this and struck him on the head. Winebrener gave him a push. This was at Shippen and Third Streets. Winebrener, &c., accompanied me home, to 39 Plumb Street, and they went home. Winebrener came down at 10 o'clock, and whilst one of them who had been in the mob, walked past limping; I said to Winebrener, "that's one of them." He afterwards passed Shippen Street on the other side, joined two others at the corner calling Honey! I have been disturbed by other tailors at my home. Boner beckoned to Moore and Donahue, the third I did not know. I had never been followed on other occasions. I met Mead on one night—he looked sneering at me, and I asked him what he meant—he said he meant merely to bow to me.

I left Robb & Winebrener's one afternoon. I saw Radford at S.E. corner of Chestnut—up Fourth at Market Street, I met Radford—came towards me—up Market to Fifth Street, up Fifth above Cherry Alley. I went up Cherry Alley, near Fifth Street—saw Radford—he turned his back to me—near Eighth saw Radford coming after. I turned—he went into alley. Above Ninth, saw him again. In Sixth, just above Market, I saw him with Mr. Tack and Meno. Saw him no more. I saw him, either before or after, at Third and Chestnut, two or three times with two others—I was called names several times by tailors in J. & C. Watson's—called a damned dun. Radford among the rest. Mead came up and said, "any man who worked for Robb & Winebrener, was a damned dun." Two or three Sundays ago, he shook his fist at me, and said, looking at me, "that's the talk." To be sure, I followed with my daughter, to look at him. He was with others. I told him I thought I would recollect him.

[23] *Gross examined* by Mr. Brown. No body with Boner when I saw him first. I have never seen him with any but Donley going home, since the difficulty. I have seen Fulse frequently at James's shop. I know him perfectly well – "Fulse," that's not the man – I have never made an inquiry for him. I have not been in James's shop, nor sent to him – Never worked with Fulse. I never saw Fulse with any of them – I was examined twice before the Alderman. I swore each time to J. Fulse by name, having been there. I don't know if Winebrener knew him. I can't tell who told me his name was Fulse. I knew him about two years ago. I have seen him two years ago. He had something in a handkerchief. I have sworn I thought it was a weapon. I thought it was heavy, and something to strike me with. He did not threaten me. We shook hands – the five were together talking, when we parted. Boner said, "not yet," and hunched him. I don't know when Fulse left them. It was dusk or later. Fulse was coming up when Boner asked the question. I had never seen the supposed Fulse with these men before. Boner and I were friendly. Nothing then passed between us. Donahue neither said, nor did any thing – Moore did nothing – I did not see Fulse after we passed Spruce Street. I saw him across the street, near the Hotel. I don't know who passed limping. I have seen him before. I think he works at Watson's. I have seen him going backwards and forwards. I never saw him after with these men. I was in the midst of the five men. When the three came up, some one said, "stop." I had my back turned. Radford never had any thing to do with me. I met Radford in Cherry Street. I was ahead of him in Market Street. We never spoke. J. M. Moore went into Robb & Winebrener's shop, and Donahue with him – of J. D. Miller,



I know nothing; of Crous, nothing, except at corner. Donahue, I have stated was at the corner of Third and Chestnut. Koons, nothing; Beatty, nothing; Scott, nothing; Skeegs, nothing; Mead, nothing. Radford I have seen different days. Donley, nothing material. I have seen him walking before Robb & Winebrener's store—met him near Binns'—looked in my face and groaned. Conway, nothing. M'Keever, do. M'Macken, at corner. Laboullés, don't know him. B. E. Moore, nothing. L. H. Wilson, do. T. Hough, do. James Wilson, do. Don't remember these. [24] James Fulse, I never saw him to injure me. John Page, nothing. J. Hough, do. L. Bates, at corner. Hunter, nothing, saw him at Squire Barker's cursing me. In office he said, damn him, he ought to be killed. Sued at Barker's twice.

By Mr. Reed. 1817. Began as a journeyman tailor. Have not continued so ever since. Took a voyage to S. America. Was gone three years. Macedonian frigate. Sep. 1817.

JACOB KLINE, sworn. Tailor by trade, in Robb and Winebrener's service. Two days after difficulty called me out of the room. No intercourse with any but Koons. Day after came to him. Asked why he worked for Robb and Winebrener. Whether he was not ashamed to work. He said, I had better come away from there to a house of one M'Guire, and there I should get money during the slack time. Tell other men to come, and not to disappoint him, but come by 2 o'clock; and if we did not, our names would be published in all the papers. Left shop. That is all I know. The house is back of U.S. bank. Public house. I told Koons I was out of business. Did not intend to go round. No journeymen present. Do not belong to society. They met in Library street house.



*Cross examined* by Mr. Brown. I think it took place on the 23d of August. I think four weeks yesterday. The day after I commenced. Nothing else against Koons. Don't know whether he belongs to society. He told me which the house was. I never received any money. I told the journeymen directly after — Ubden, Mayhen and others generally. About an hour, Winebrener came up to inquire. I told him; went once to Barker and Binns. Koons talked about nothing else when he came to Kline.

R. O'NEIL, sworn. Has had work for Robb and Winebrener. Soon after difficulty Robb and Winebrener applied to me to do work. It was sent to my shop. Soon after, three men came into my shop. Radford said, that they had come, they were late journeymen of Robb and Winebrener, and to inform me of the reasons which obliged them to send out work. He talked of the difference. I said I had heard one side, and wished to hear the other. Mr. Radford related to me the circumstances. I said I had heard the same before from Mr. Winebrener. They endeavoured to prevent my doing their work — they said it would be disgraceful for me to work for Robb and Winebrener, under the present circumstances, and that if Robb and Winebrener [25] could not do the work others would get it, and probably I among the rest. We had much other conversation. I said it was a dull season and that I had to do the work. One of them asked if I would do wrong for money. I said such a wrong was no more wrong that a man could see it so. I told them I would think of it before I took any other work. They said a certain number of men, four or six, were making a habit of thin stuff, and, that there was a dispute about it, and that they had been dismissed after being paid. The other men in the shop had agreed not to work

unless the others were restored and their errand was for me not to take work for Robb and Winebrener. Charles Ramsay came in whilst they were there—Jonathan T. Hough was one. Do not know the third. Only swore to Radford before Barker—and swore to another who I thought was the one.

There is always a difference of price between thick and thin garments. In a riding habit of pongee, and cloth, I can give no opinion. The difference between thin and thick coats is in the bill. A few shops are regulated by the bill. The difference between thick and thin pantaloons is about twenty-five cents, as in the bill. In the generality of shops the difference on coats is between one and two dollars. Can't say as to difference in habits.

*Cross examined* by Mr. Brown. My shop is in Arch near Third street. I don't know the day they came. Their account corresponded with Winebrener's. I have been examined twice on this affair at Mr. Barker's. I do not recollect swearing to Miller. He being pointed out, said no. I said one of them looked like the man. I did not say I thought Scott was the man. Identify Hough. I never saw, in the shops of any of these gentlemen governed by the bill, a riding dress made. I do not know who is governed by the bill. Messrs. Robb and Winebrener are governed by the bill. Mr. Watson is. I have mentioned this matter to many. Robb and Winebrener and I have had considerable talk about it. I never told Mr. Winebrener of this matter in my shop, nor in his. I do not know whether I ever told him.

CHARLES RAMSAY, sworn. Works for Robb & Winebrener. I take out the clothing. I know several of the defendants. I went, the day after the difficulty,

to Mr. O'Neil's in Arch street. I left the work. Radford, and I think, Scott and Miller were there – identified them to the best of my knowledge. I have seen them at corner of Third and Fourth and Arch street. I went to Cleaver alley the next day, in Walnut between Fourth and Fifth I met B. Moore; he followed me up Fifth to Spruce street, up Spruce to Sixth – I ran to Cleaver alley – [26] went into an entry – saw him looking. I then delivered the clothes. Returning in Fourth, Mr. Moore was before me. M'Macken came up at Fourth and Chestnut (several at the corner) and asked me where the work had been taken. I refused to tell him. On the 15th, going up in Chestnut above Fourth, I saw Donahue and J. M. Moore; they followed, and saw where I went. In Fourth street Donahue came up and asked me where I had been, saying he was a countryman of mine, and would not harm me. I refused – The same two stopped me coming up Third street, and requested to know what I had left with Jewel. I told them I had left pantaloons. Yes, says one, that's right, that's what we want to know. One of these, whose name I don't know, followed me down to Second Street. I have seen these defendants standing about Robb & Winebrener's store. I saw, both Houghs, Miller, and all those sitting on the benches. Some of them were standing about the corner when stopped, from six to eight. I was in the store when the fourteen brought down their work. I know them by sight – Biderman, J. Hough, B. Moore and M'Macken. They said, we can't do any more work without you restore those men. Winebrener advised them to finish the work – told them they knew the consequence of leaving their work – they had engaged to do it, and it would be an error to leave it,

and that he would sue them if they left it. He told W. Robb to take down their names. They stayed a moment, threw down their work and went out. Laboullés left his job up stairs.

*Cross examined* by Mr. Reed. I have seen Koons at corner of Fourth and Chestnut. I have seen him about Robb & Winebrener's store.

*Cross examined* by Mr. Brown. I have seen all the men on the benches, about there – not Fulse. I know the fourteen well, by sight, but not by name. I was in the store until they went out. Names, Biderman, Hough, Moore and M'Macken. About twenty-six came in – all did not throw up work. None came in but Robb & Winebrener's workmen – somewhere about twenty-six were in Robb & Winebrener's service – good many threw up their work. Those who threw up work: Did J. M. Moore? Yes. T. Radford? No. J. D. Miller? No. Crous? No. Donahue? No. Boner? No. Koons? No. Beatty? Yes. Scott? No. Skeegs? No. Mead? Yes. Donley? Yes. Conway? Yes. He was there. M'Keever? Yes. M'Macken? Yes. Laboullés? Not positive. B. E. Moore? [27] Yes. Not positive as to trowsers. L. H. Wilson? Yes. Not positive as to coat. James Wilson? Yes. Fulse? No. Page? Was in back shop. J. Hough? Yes. L. Bates? Not here. R. Hunter? No. I was questioned in squire's office once – I do not remember whether I swore to Scott and Miller. I now believe them to be the same. O'Neil swore to them. I can't say whether he swore to any but Radford – he said he thought Miller was one, and then I swore to Miller as I believed. I saw the others standing, and watching, and following me. I made a memorandum the day after of the affair, at the request of no one. I never showed



it to any one. I can't say I ever spoke to Robb & Winebrener about it. In Third street I met Donahue and Moore – the others I can't name. I can't tell who stood at the corner when Donahue spoke – there were always some about the corner. Have seen M'Macken, Moore and Radford on the 15th, two days after work was thrown up – did nothing – don't know where they were. I never was in Watson's in my life. Never saw Watson and Winebrener talk.

Mr. Wurts. About thirty or forty workmen in Robb & Winebrener's employ – don't know them all by name, but by sight.

Adjourned.

P. M. at 1-2 past 3.

KENNETH JEWELL, sworn. I have not within two or three weeks had any work from Robb & Winebrener – three or four weeks ago I had a coat made for Robb & Winebrener. After about five minutes, a person called in, I think Donahue. He asked me if I was making a coat for Robb & Winebrener. I asked him why he asked me. He replied, he knew it, for he had seen Robb & Winebrener's man bring in the coat. He said I had better not make it; he thought it would be a disadvantage to me. I said I should do as I thought proper. Some other conversation. I did not make it. My men refused to make it for me. They said they did not want to offend the Society. One belonged to it. Journeymen Tailor's Society. I think Donahue said he was a member of the society. I don't think he had any intercourse with my men at this time, nor afterwards. Next day they refused to make the coat, and I sent it back unfinished.

*Cross examined* by Mr. Brown. Saw none but Dona-



hue – nothing said by Donahue or my men about Robb & Winebrener's reduction of price. Mr. W. [28] had talked to me – did not propose my not employing these men.

By Mr. Wurts. Some difference, about \$1.50 between habits, as in coats of thin and thick stuff.

By Mr. Brown. There is a difference in my shop in pantaloons – In some respects I have used the bill.

THOMAS CARR, sworn. Journeyman Tailor, in Mahan's employ – L. Wilson and J. Miller came to the shop – said they had a dispute with Robb & Winebrener – and that they had, or intended to prosecute them. I asked them as to dispute – they told me the same as stated before – that is the amount of conversation. I think one journeyman was present – I am not certain. I said to one, I thought Robb & Winebrener would perhaps request Mahan to make some clothes, but I thought I would not be so requested. Miller said, "I do not believe you would be troubled by them," or to that effect. I among many others in town would not do what I considered not right, and I thought that not right. I believe Wilson and Miller belong to tailors' society. I am not a member. I was, but am not now. Neither of them requested me not to do Robb & Winebrener's work. My reason for thinking it not right was that in like circumstances I would like to be done by as I would do to them. Because it is contrary to all rules among journeymen tailors. The rule, as far as I know, is such, that, in case any journeyman in Robb & Winebrener's, or other shops should strike for higher wages, or other causes, I should feel bound not to work for Robb & Winebrener, but not to prevent others working.

*Cross examined* by Mr. Brown. They did not attempt to prevent my working – they said Robb & Wine-

brener's offer was lower than usual wages. I do not know of a master Tailor's Society – have frequently seen the bill – believe at Robb & Winebrener's, Watson's, Folwell's, there is no difference between wages for thin and thick pantaloons, nor between cloth and pongee habits. Twice as many seams in pongee habit. There is no difference between thin and thick except in coats and coatees. I would rather make cloth habit than pongee – there is less trouble. My main reason for saying I would refuse, was, I considered these men oppressed.

JOHN D. CAMPBELL, sworn. Work from Robb & Winebrener – was sent to Mahan & Co. for our boys to make coat – was sent on Saturday for them to make. The work was not done in the [29] shop, because the men would not work whilst the coat was in the shop. It was done at the apprentice's house. They would do no work whilst the coat was in the shop. As soon as the coat of Robb & Winebrener's left the shop, work was done. The man who came down, refused to work until the coat was taken from the shop. Never made a thin habit. I suppose the difference in habits ought to be the same as in coats – about two dollars difference in coats.

JAMES SHERIDAN, sworn. Journeyman of Robb & Winebrener – left them in August, because they refused to pay the price demanded for the habit, and discharged the men who demanded it – I belong to Society – I know there was a special meeting about the 9th and 14th August; it was called by seven or eight – don't know who. I never heard any of defendants speak of calling a special meeting. I know no signature to paper but L. H. Wilson, which I thought resembled his. I have seen Wilson write. I attended every spe-

cial meeting – other journeymen of Robb & Winebrener's were members. The subject was the determination that all should quit their places unless the six were reinstated. Resolution to that effect passed. Held at M'Guire's – the following defendants were present: J. M. Moore (I think), Radford, J. D. Miller, Crous, Donley, Conway, Laboullés, B. E. Moore, T. Hough, J. Wilson, Page, J. Hough, Bates, – there has been money contributed to support R. & Winebrener's men whilst out of employ – not at that meeting. If a journeyman is not a member of Society, he is required by others being members to become one within two or three weeks. Don't know the rule. Those who informed me of the rule were not to my knowledge present. I have never heard any of the defendants speak of the consequences. I was at Robb & Winebrener's when the men struck – J. M. Moore, Radford, Miller, Crous, Beatty, Scott, Mead, Donley, Conway, M'Keever, M'Macken, Laboullés, B. E. Moore, L. H. Wilson, Page, J. Hough. Bates not in the shop – Names of six discharged, including Magnis. If resolution had not passed I would not have struck – the example of the others influenced me.

*Cross examination* by Mr. Brown. Don't remember when I quit – after the meeting – the price demanded by the six was regular. Complaint of six was that they were discharged for demanding their rights. I know of no difference between thin and thick habit. I would sooner work on cloth than thin stuff. Eighteen months a workman, think more seams in pongee dress – no difference between thin and [30] thick pantaloons in Robb & Winebrener's – no difference except in coats.

JOHN FLAHERTY, sworn. Secretary of our society – meet in Library street, at M'Guire's – about 10th or

14th August there was a special meeting held – I can't tell at whose instance – request for special meeting must be sent to President – produced the minute book. Each individual shop has its rules, but no rules of society on the subject of compelling journeymen to join. In the shop in which I work, there are journeymen who do not belong to the Society. If a poor journeyman will not join the Society, I would do nothing – if one who could pay were to enter the shop we would recommend his joining, with the concurrence of our employer, and if he refused, we would do nothing.

*Cross examined* by Mr. Brown. No leaf has been torn out since I have had it – it was an old book – motives of economy induced me to take the old book.

GEORGE BAUSH, sworn. President of this Society – can't say who called special meeting – I think Radford's name was on the paper – I think Beatty's – recollect no other – I gave call to Secretary, who told me to day he had destroyed it – such papers are not usually kept. I think L. H. Wilson's name was on it. M'Keever's, Donley's, Mead's, Moore's, I do not recollect.

By Mr. Reed. President of Society two years – was President when the Bill of Prices was agreed on. I took the bill of prices to Robb & Winebrener – they asked to wait for an answer – they afterwards sent for me – I was then in their employ – said they would pay the prices there stated – no difficulty there or elsewhere, from that time to the present. Wherever there was a distinction between thick and thin, it was inserted in the bill. I would prefer a cloth habit. Not in Robb & Winebrener's employ.

*Cross examined* by Mr. Brown. There is no distinction inserted between riding habits. Only distinction is in case of coats, coatees and jackets. Principles of so-



ciety are to prevent the employers from oppressing them, particularly when new fashions come up, and any innovation is made, they may have resort for relief – to assist the poor journeymen. We have a formal constitution, unincorporated.

LEWIS POPPAL, sworn. Apprentice of Robb and Winebrener. I heard B. E. Moore say, he for one was willing to scab the shop for three or four weeks. Biderman and Radford were present. I heard Radford, Miller, and others, talking about calling a special [31] meeting. They wished to have one to strike for the discharged men – I have seen a call for a special meeting, (like the one produced), and I saw M'Keever sign his name to it.

*Cross examined* by Mr. Brown. Three or four days after Moore's declaration, they left the shop. Winebrener asked me about a week ago what I knew, and I told him – Since the time of the commencement of this Court.

WILLIAM ROBB, sworn. Present when the workmen threw up their work. On the 14th of August, twenty entered the store, fourteen with work. Hough and Biderman went up to Winebrener, (same reply of Winebrener as stated by him.) M'Macken said "Lay down your jobs." They did so. I took down their names by Winebrener's direction and gave them to him. They were, L. H. Wilson, Miller, B. E. Moore, J. M. Moore, Crous, M'Keever, Conway, M'Macken, Beatty, (Laboullés had a job, but was not there;) these are all I recollect. I do not recollect the names of those who had no work. Only went out at meals. Generally saw two, three, and four standing above and below the shop – different ones. I only saw them standing there, above and below. I have seen some behind the building, hallooing, cursing and swearing, I supposed at me.



I saw them attempting to look in the store, shaking their fist at me – called me son of a bitch – challenged me to come out – I saw them use a spy-glass, directed towards me – I was in back work-shop, third story. I know nothing more.

*Cross examined* by Mr. Brown. Never had any difference with these men – I helped to put one of the men down stairs who came into the shop. I was called names first, three or four days before. I was in third story workshop, when called these names by Skeegs. They were on Girard's premises, below the bank. Saw spy-glass. Foy used glass – none of the defendants used glass; can't say if they were there. No names were then used. Can't remember what they said. I did not speak to them. I might have hallooed at them.

William Rayfield did not appear.

SAMUEL ROBB, sworn. I returned to city on 17th of August. I have seen these men with others round the store, in every direction, until 25th August. Seen them walking up and down with others, seeming to eye the store – stepped opposite, looked in and passed on. I have seen Bates since the 25th of August, walking up and down. One afternoon Bates came up to the door and hooted as he passed by.

[32] CHARLES ROBB, sworn. Was not present at striking – when I returned, I found the counter covered with unfinished work. I found the call for special meeting in an open box of M'Macken's; corner torn. Men in our employ do not like thin work, as they get less for it, in coats and coatees; they get less for a thin cloak, in which there are more seams. W. Beatty came on the step and came very close to me. I had to avoid him. Radford passed the door. I asked one whether it was his turn to stand guard – he said yes.

*Cross examined* by Mr. Brown. The prosecution

was not instituted until after Winebrener was sued. Boner, Moore and Fulse were first charged. Men who left us, we sent word to them, they must come and take away their things—came on Saturday, and we told them not to come again—Door shut—men returned—J. Moore, Donahue, Michael Foy and Wilson had been forbidden to come. Foy said he would go back. I told Moore on Saturday never to come. He did not come for lap-board. He did not refuse to go, for we would take no refusal. Winebrener said he would give Radford a chair.

WILLIAM RAYFIELD, sworn. Apprentice of Robb and Winebrener. Heard Page say that on the 14th of August, they had had a meeting the night before—that it was proposed at the Society by some of the men, to scab the shop—the majority carried that they should strike the next morning as soon as Winebrener came up, which they did—he mentioned no names.

*Cross examined* by Mr. Brown. This took place in the bushelman's shop—It was the day they struck in the morning—I know it was on the 14th, because the journeymen's names were wrote down by W. Robb—never saw paper—I had been speaking about it and heard date mentioned—Never spoke to Robb and Winebrener about it—know Page by sight—Nothing else.

SAMUEL MAYHEW, sworn. Had a conversation with M'Macken on Monday at Mr. Parker's in 6th Street. He asked me where I was at work. I said at Robb and Winebrener's. I went to Society's Room. He asked me whether I intended continuing with Robb and Winebrener. I told him I did not know. I said I had myself and family to maintain. He asked whether I could get work elsewhere. I said, I did not know. He

asked me providing I didn't work there, and would take pay from the Society and leave there, he said they would bear my expenses in the dull time. He said, he didn't wish to persuade me to leave—I didn't care whether I worked or played, if I had money [33] enough to support me. He said if I concluded not to work for Robb & Winebrener, and would call in the evening or the morning after, he could not say which, I should have the money. Skeegs, Boner, L. H. Wilson, J. Mead, and another man, were present, whom, I think, they persuaded not to work for Robb & Winebrener. Went to society in consequence of what he had heard at Pickering's.

*Cross examined* by Mr. Brown. Now work at Thomas Taylor's—ever since I quit Robb & Winebrener's—can't tell when I left Robb & Winebrener—about three weeks. On Monday conversed with M'Macken. I took a job out at Taylor's after the conversation on Tuesday or Wednesday. I quit Robb & Winebrener the day I conversed with M'Macken. I got from Robb & Winebrener half a coat on Saturday, before conversation; and Monday, a.m. I told Robb I couldn't get the coat done in time, and gave it up. Before I went to society's room or talked with M'Macken I had not given up employment, but merely the coat. I could have had more work. I considered myself in their employment. When I gave up the coat, they asked me my reason for not finishing it. I told them. They said they would give me another job. I have applied to them since last Monday week. I got a promise of one as soon as they had one to spare.

I have conversed on the subject with W. Robb—I don't know whether before or since the promise of

more work—every time I have been at the shop I have had something to say about it—we talked about the trial—he asked me what I knew—I didn't tell him—I have heard Chamberlain speak of the trial, &c. I was persuaded by the workmen to go down and have a talk with the crooks (masters) about the affair. I said I would not; it was time enough when I came to court. Told the journeymen about the affair at the society's room—Never received money.

I think they persuaded the other man unknown, in my presence. My reason for thinking so is, that they wished to get themselves back, and in order to do this, to prevent others working for Robb & Winebrener. No other reason. He works at Watson's—don't know his name. I did not decline working for Robb & Winebrener on account of promise of money at the room—they said they had enough collected to supply all Robb & Winebrener's workmen, if they would comply in the condition. I left Robb & Winebrener's service for other reasons—not a member of society.

By Mr. Wurts. Disturbance at my house. I went down stairs on Monday, a.m. I told Mr. Robb there had been a disturbance at home. [34] My wife came in and interrupted us. I left the shop. I afterwards told him. Mr. Pickering said I was doing the worst thing possible for myself by working for Robb & Winebrener, and I would get no work in a regular shop—(objected to by Mr. Brown, and objection overruled)—he said, if I knew the danger of working for them, I would not work for them, but take a friend's advice, and leave them. Then I went out. I also told Robb I found Pickering talking with my wife, when I came in on Sunday evening—he asked me if I knew the danger; I said, yes. I ordered him out, and then put him



out. Mr. Miller, partner of Pickering & Pickering, told me at the shop, the same as above, and added, the journeymen would not sit alongside me for being a dung. Dung is a workman who works under full price. Scab is the same. Don't know the meaning of to scab.

*Cross examined* by Mr. Brown. None of these defendants called me a dung. I turned Pickering out for ill treating my family – used harsh words. This was not all the disturbance. The disturbance with the others prevented my finishing the work. The difference with Pickering alone, would not have prevented my finishing the work.

By Mr. Wurts. My wife also said after they went away, if I expected work elsewhere, I had better not work for Robb & Winebrener.

*Cross examined* by Mr. Brown. I turned Pickering out for using language I did not like – something else beside my wife's remark occasioned the difficulty with her. I will not tell what it was. If nothing but the disturbance at home had occurred I would not have left the work.

JOHN SHIELDS, sworn. Worked for Robb & Winebrener one day and a half. I quit them on account of the dispute with the men. I have been in M'Guire's tavern – saw Skeegs there – did not converse with him – about twelve or eighteen present. I spoke to one of the men who had formerly worked there, and asked him if he knew any one who would take me to work under instructions. I went with him to M'Guire's – he said he would inquire – I think his name was Lyon. Some of them said, it was no use for me to look for work at Robb & Winebrener's, as there had been a dispute. I might get work there, but that I would not be at



liberty to get work elsewhere afterwards. I had been before at Watson's, and some of the men said I might get a job there, and they would intercede for me. [35] I went there again – was told to call next day. I then went to Winebrener's, after several calls, and then got a job. I left there because I did not want to work on account of the dispute. Going down Fourth, I was met by several whom I don't know, who had raised umbrellas – between 7 & 8 o'clock.

ALLEN WARD, sworn. Thomas B. Cannon boarded with me at the time of Robb & Winebrener's difficulty with men. I introduced him to Robb & Winebrener, in order to get employment for him, before knowing of the disturbance. I presume it was his intention to remain in the city. Left Philadelphia about a week after the disturbance.

WILLIAM ROBB, recalled. I have heard the rules of the society explained by some of the defendants to new journeymen – I have heard them say they must join the 2nd Monday night after entering; and if not, they would be fined 25 cts. – if they persisted in not joining, they could not work in the shop.

*Cross examined* by Mr. Brown. I don't know who said it – never spoke to any of defendants about it – as a rule of the society, not a rule of the shop, they would either fine him or compel him to leave the building; if he resisted paying, they would quit work. Not a member – never was fined. I have never known a man leave the shop on account of not being a member. Mr. Radford, M'Macken, Skeegs, spake of this regulation. I have heard it distinctly, that it was a rule of the society. Nothing of a cowskin purchased by Mr. Winebrener, never heard of it. Ross is Winebrener's clerk.

WILLIAM MITCHELL, sworn. Workman of Robb & Winebrener – went to work early in Summer – worked

two weeks – not being able to pay the entrance to the society, as I had been erased from the books once before. I never saw any of defendants at society. The rule was when a man had worked in a shop ten or twelve days, he was forced to join, or each one in the shop would be liable to a fine. I belonged two or three weeks. Coming down Chestnut street three or four weeks ago with a man named Heno – (stopped.)

*Cross examined* by Mr. Brown. I became a member in October, 1825 – been journeyman since – in shop of Seely & Baggs, 2 months; Watson, 3 weeks – never fined since I left the society. At Watson's I had not money to pay old dues, and passed 2 Monday nights. Mr. Ross said, each one in the shop would be liable to a fine, and I would be discharged. Never heard the rules read, nor read them.

[36] ALDERMAN BINNS, sworn. Has compared Radford's writing with letter to Goodwin. What is your opinion of comparison? Does not know the writing. (Objection by Brown.)

[After argument by Mr. Ingersoll and Mr. Brown, the testimony was excluded.]

. . . [40] DAVID WINEBRENER, recalled. *Cross examined* by Mr. Brown. Saw Radford sign a recognisance before Mr. Binns. Correct error, about Beatty. Was one of those who threw up work – not one of the five. I have refreshed my memory by reference to my book. I have a distinct recollection of his not being among the six discharged. I have not been, nor sent to J. James's store. I have at no time called on Watson. I have never requested Watson not to employ these workmen. Watson requested a list of names; I gave him one. He consulted me about a workman. I have preferred a charge against Boner, before Thompson.

By Mr. Wurts. I heard Hunter say, Chamberlain

ought to be murdered – he was not fit to live, as he had taken employ in our service, whilst the rest were on a strike.

The testimony in behalf of the prosecution here closed.

#### MR. REED'S OPENING SPEECH

[41] May it please your Honours, Gentlemen of the Jury. . . In September, 1825, a bill of prices was agreed on by the journeymen tailors of this city, intended as a standard by which their wages were to be regulated, and the terms on which they were to work, were to be settled. It was submitted to several of the master tailors, admitted by them, among others expressly by Messrs. Robb & Winebrener, and as we shall show you, continued so to regulate the prices, without the least objection on their part or difficulty on the part of their workmen, from that time to the present. Some of the defendants worked for Robb & Winebrener at the time the bill was published, continued with them until the commencement of this difficulty, and, I may incidentally remark, have borne the most exemplary characters, having faithfully discharged their duties and never given their employers the least reason to complain. Previously to the adoption of this bill of prices, difficulties had occurred on points in all respects analogous to the one in which this dispute originated. Distinctions of various kinds had been [42] attempted between thick and thin clothing, which in most instances had been resolutely resisted by the journeymen, and rarely insisted on by the employers. In some articles of dress, the men were willing to admit a distinction, in others they were not, and to put an end for ever to such altercations, always unpleasant and never profitable, a specification of prices was determined on, and such a

printed document prepared as would effectually preclude any further ambiguity. Such was this bill of prices, being really a compromise between two conflicting interests, by which each party surrendered something and received a satisfactory equivalent. All the distinctions which the journeymen admitted were specified; where, as in the case of coats and coatees, they were to receive less for summer than winter clothes, it was so set forth. But where, (as we contend) as in the case of riding habits, no distinction was contemplated, none appeared upon the record. In addition to this, we will prove that there is no reason whatever for the distinction, now, for the first time made by the prosecutors in this suit; there being more work on a riding habit made of thin pongee, for which Mr. Winebrener declares less should be paid, than in a cloth habit, which, says the same gentleman, only is referred to in the bill of prices; and that the additional reason given for a reduction in the particular instance in dispute, *viz.* that the habit was for a person of small stature, never was alluded to until one of the witnesses yesterday mentioned it in Court.

We now come to the origin of this difficulty, and the occurrences in the shop of Messrs. Robb & Winebrener. Early in last August, these gentlemen received an order to make a pongee riding habit; the notice being short, it was put in the hands of six of the men, Radford, Hough, Skeegs, Wilson, Scott, and one other of the name of Magnis, who though equally guilty with the others, has not been included in the indictment, nor referred to by any of the witnesses, but whom we shall produce on the part of the defence. It was finished and delivered. On pay night, when these men went to receive their wages, they were surprised at an offer



made by Mr. Winebrener of six dollars for what their bill of prices secured them at least seven. They however distinctly declined receiving the six dollars, as not being the compensation they [43] were entitled to, and their employers as distinctly refused to give them more. Both parties immediately instituted inquiries as to the practice in other establishments, and each, it appears, returned equally satisfied with the propriety of their original determination. Messrs. Robb & Winebrener at last yielded, paid the seven dollars, and as a punishment for asserting their undoubted rights, dismissed the six men from their service.

On the dismissal of these workmen, the others, fourteen in number, without premeditation or preconcert, influenced by no other motive than indignation at what they considered an act of oppression, only desirous to express their disapprobation of the treatment which their fellows had received, merely for refusing to submit to a wanton invasion of their rights, immediately threw up their work, and on the refusal of Robb & Winebrener to re-employ the men, quit their service. The impulse was honourable – the act we will show you was strictly legal – They had seen an attempt made to trample on their fellow journeymen – they had seen a conspiracy, (if we are to have common law definitions,) on the part of Messrs. Robb & Winebrener to keep from them the few cents to which they were entitled, and they left a service in which they were probably to be the next victims. Defeated in this first attempt at oppression, for we will show you there was a series, Messrs. Robb & Winebrener instituted civil suits against the fourteen on account of the unfinished work. For this step, had it been unconnected with others, I see no reason to blame these gentlemen. A



civil action was the appropriate remedy, and I am persuaded it would have been better for their own sakes had they been contented with it. But they were too much excited, too much exasperated, to keep within the limits of the law, and a few days after, Mr. Winebrener, in the public streets, committed an unprovoked, undeserved assault on Mr. Boner, one of these defendants, a helpless unoffending man; and on other occasion, in conjunction with two of the Messrs. Robbs, and I think Mr. Chamberlain, (of whom hereafter) violently attacked Moore and Donahue, two other of the defendants, who had peaceably returned to the store to obtain some things they had left, and beat them from the upper story down to the front door. [44] Not satisfied yet, these partners again look to the law, go before Alderman Barker, and institute a prosecution for conspiracy against ten of the defendants, the magistrate requiring security for their appearance at the Mayor's Court, and that they should keep the peace. On this requisition being made, three of the defendants, Scott, Skeegs and Bates, refused to give bail, and declared their intention to go to prison, should it still be required. The consequence was (I now use the words on Mr. Barker's docket,) "that the prosecutors withdrew the charges as to the three," and were contented with their recognisance to keep the peace. Two others of the defendants were taken on a warrant issued by Alderman Binns, and the whole number of those bound over to appear at this Court, amounted I think to twelve. What, however, was the surprise of the defendants when a bill of indictment was sent to the Grand Jury including twenty-five individuals, whom the prosecutors had determined if possible to implicate, and among whom was one, who has been prosecuted by a

mistake, and against whom not a shadow of proof exists. I mean James Fulse, an individual unknown by person or character to the prosecutors, a stranger, whose first welcome to our city has been a vexatious prosecution for a conspiracy. Messrs. Robb & Winebrener in their anxiety to prevent the escape of the guilty, have gone rather too far, and have, it appears, involved the innocent. These are the facts of the case, as in the course of the evidence we will endeavour to show you.

In relation to the indictment, we say it is not sustainable in law, as we will show on the argument – that it is not sustained by the evidence on the part of the prosecution – that it is contradicted by the facts as they actually existed, for we contend at the outset, that instead of insisting on higher than the usual wages, as it is alledged in the indictment, the only demand they ever made was a just one, and that they were dismissed for demanding the usual wages – If there was a conspiracy to alter wages you must look for it elsewhere – The letter to Goodwin – the assault on Shields – the attempt to seduce Mahan's workmen, have not been proved, and we do not think it necessary farther to trouble you on these points – we shall however [45] show you that both O'Neil and Ramsay, whose evidence has been much relied on by the prosecution, have in the course of this affair made the most contradictory assertions, and that they both swore to different individuals before the magistrate and here. With respect to Mr. Chamberlain, the hero of the prosecution, whose sufferings in the cause of his vigilant employers have been so much dwelt upon, and have constituted the burthen of every incidental remark that has been made, we will, I hope, clearly show you that no dependence

can be placed on what he says in relation to the alledged assault in Third street. This gentleman's courage, though he did make a three years' cruise in the Macedonian frigate, certainly had not improved by experience, for such was his bodily fear and apprehension, that he mistakes an accidental meeting of a few unoffending men for a deliberate conspiracy against him – a friendly salutation for a disguised attempt to injure his sacred person, and, as we will show you, confounds a murderous weapon, as he described it, “about twelve inches long, and calculated to strike,” with an innocent pair of bombazett pantaloons, tied up in a white handkerchief. Here we might rest, but we will venture to ask your attention to another fact as illustrative of the feelings and dispositions of the prosecutors towards these defendants, for we will show that not only did Robb & Winebrener dismiss these men – not only did they offer personal violence to them – not only did they take legal measures against them, both by civil suit and criminal prosecution, but they endeavoured to influence other master tailors against them, and to prevent their employing them, and in one instance actually procured the dismissal of one of these very men from the service in which he had engaged – If, gentlemen of the Jury, we can make out these points, I have no fear of the result of this prosecution – I think we will not be unreasonable in asking you to acquit these men whose rights, poor, humble as the individuals may be, should be as inviolable as the rights of any in the community. If such motives can influence your decision as to the guilt or innocence of these defendants, we ask you to contrast combinations of journeymen, such as are alledged in this indictment, with combinations of master tailors, such as we hope to show you

actually existed. In the one case a determination [46] by poor men, dependant for subsistence on the result of their daily labour, to abstain from work, must be temporary, whilst a combination of master workmen, men of high character and credit, with all the influence which their patronage gives them, will be irresistible. A temporary suspension of business to them is comparatively trifling—they have but to be resolute in order to bring their workmen to the terms they choose to offer, whilst the others, with means and resources in every way inadequate to such a contest, will soon be compelled to retract demands however just, and submit to injuries however galling.

JAMES PARKINSON, sworn. I saw Boner and Chamberlain together on Saturday, p.m. 18th August, I think near Walnut street—I overtook Boner and Chamberlain near Walnut in Third street; not having seen Chamberlain for sixteen months, but knowing him, and knowing he had been employed at James & Cook's, I stepped up to him, and asked him how he was. I shook hands with him. I asked him how his family was. He said they were all well. I observed to him that I had heard a few days before that he was in my old situation. He asked where I meant. I said at Mr. James's. He said he was not. I asked him, Where are you then?—At Robb & Winebrener's, he replied. I told him I had heard some persons say that Robb & Winebrener had threatened to kick him out of their store. We were then opposite Burden's, near York court. Chamberlain said, Good night, I have some business with Mr. Burden, and I want to go over there. That was all I saw of Chamberlain until I was subpoenaed by Mr. Boner to come to court. Coming up



to the court house, I met Chamberlain at the corner of Chestnut and Fifth streets; I saw him looking full at me; he was close to me. I saw Chamberlain last week at the corner of Third and Chestnut streets. J. Boner, a lame man, accompanied us down Third street. I did not hear Boner say any thing – I walked between them – had a bundle with a pair of unfinished pantaloons under my arm. No unkind words were spoken.

Boner never said, "Not yet," nor jogged me by the arm, unless accidentally, in walking. Chamberlain was not surrounded whilst I was with him. I saw Moore and Donahue a few minutes after in Third street. They were not with me when Chamberlain crossed the street. I did not remain two minutes after Chamberlain left us. I met Mr. Kelly. Boner went away while Kelly and I were talking – no threatening word or act was used in my presence. I think Boner lives down Third or [47] Fourth street. I had been working all day. I was going to take a walk a square or two. Boner made no remonstrance about working with Robb & Winebrener. Near Jewell's met Chamberlain. I carried the bundle under my arm. He used to come to James's, and get work for me, and talked to me – had no difference with me – never said he was at liberty to work where he pleased. I never said it was wrong to work for Robb & Winebrener. "Not yet" never was said. Boner walked rather slower than I. I never saw Boner beckon. No men came up before Chamberlain said, "Good night," &c. Chamberlain crossed in a kind of half run. I may have stopped a few minutes with Kelly before the hall. Boner was not with us. I know Fulse, I think he is from Jersey, and arrived in May.

*Cross examined* by Mr. Wurts. I came from C.



Watson's shop. Boner left the shop a little before me. I did not see him until with Chamberlain. I started to walk round a few squares for fresh air. I live in Sterling alley, between Cherry alley and Race street, and Third and Fourth street. It was about dusk – not dark. Nothing but pantaloons with me in a handkerchief – saw Moore and Donahue coming down Third street; I returned up Third street, thinking it too late to go farther – intended to go to Mr. Balps – returned the same way. I had not been home to dinner. I had been unwell. I saw several persons, whom I do not recollect, passing up and down. I think I have shaken hands with Chamberlain; one occasion, I think I recollect, in particular – that was once whilst I worked at James's shop; one Monday my young brother wanted some clothes. I went with him to buy cloth. I went down to Chamberlain's house, and asked him if he could make a coat if I would cut it out. Chamberlain had often come to James's shop. I can't tell why Chamberlain ran across Third st. I was surprised. I don't remember what Moore and Donahue said. I think, perhaps, they might have spoken of Chamberlain. I did not stop with them more than a minute – they said "Park, let's go home." I don't know where they lived. I did not know Moore before. I did not see Donahue cross – only saw Chamberlain. They continued down Third – I went up. I don't remember seeing any one with Moore & Donahue, neither Boner nor Kelly were with them. I am a member of the society of journeymen tailors. I can't recollect special meeting on the 10th or 14th. I think I was at a special meeting about that time. The subject before the society was, the bad treatment by Robb & Winebrener of their workmen – and their turning them away for

demanding regular prices. I know the meaning of striking. I gave my voice for leaving off work. I did not intend to force Robb & Winebrener to restore the other men. In 1821, I worked for Robb & Winebrener; after working about two weeks, Mr. [48] Winebrener told me to come down to Bushelman's shop. I went down, and worked one week. The regular price for a week's labour is twelve dollars. Ross offered me eleven dollars. I refused to receive it. He said I had better speak to R. & W. He said he knew nothing about it. He thought it was an agreement between Winebrener and me. I went away without money. I returned on Monday. Mr. Winebrener said, if I exacted twelve dollars, he had no more use for my services – this was my reason for voting; and also, because it is a thing men have to gain their living out of – and if regular prices are not paid, we can't support ourselves. I heard Chamberlain had been in James's store. I did not know Chamberlain was in Robb & Winebrener's employ. I can't recollect any one saying Chamberlain was in Robb & Winebrener's employ – I have never attempted to talk men out of employ; if the men had refused to leave Robb & Winebrener's employ, they might have continued there – they were free men, and acted for themselves.

By Mr. Brown. I believe that to be the bill of prices – generally given at Robb & Winebrener's, and Watson's. I believe it is harder to make a thin than a thick habit.

By Mr. Wurts. I understand a pongee habit has been made at Watson's when I was not there.

WILLIAM PRENDEVAL, sworn. I have worked for myself at C. Watson's off and on, between 5 or 6 years, since my father died – I was at work all 18th at

Watson's – I saw Parkinson there – I work in the same shop – also, Boner. Parkinson left the shop about dusk – before my coming down stairs – bundle under his arm – it was a pair of pantaloons which he tied up in my presence.

MARTIN RYAN, sworn. I know Fulse very well. It was in April when he came to the city – he was in my company on Saturday, Aug. 18th, from before dark until a good while after – in Franklin court some time – I can't say whether he knew any thing of difference in Robb & Winebrener's store – never left me – supped together – at my lodgings before dark when I came home.

JOHN MAGNIS, sworn. One of the 6 – made sleeves and one fly – extras – two flies on breast – vent in cuff, each cuff – wadding in breast – wadding in sleeve heads ( $18\frac{3}{4}$  cents.) I believe that is all. Dress with skirts, six dollars; each vent in cuffs, six and quarter cents; each fly twenty-five cents; wadding twenty-five cents; wadding in sleeve heads eighteen cents three quarters; seven dollars were demanded. Same bill. Six were in [49] the job. I'd rather make a thick habit, without regard to price. On my return from Baltimore I found doors shut.

*Cross examined* by Mr. Wurts. Charles Robb said, perhaps they would employ me as I was absent, provided I would leave the society.

MICHAEL FOY. Workman of Robb & Winebrener's. This is the bill I have always worked by – know of no difference in habits; extras, wadding in breast, and sleeve heads; two flies in breast; vent in cuffs; had skirts. Men demanded seven dollars six and quarter cents; was offered six dollars; seven dollars six and quarter cents was fair price. I did not say, By G—d, I would go back – I was going along with Wilson – we saw the

door open and went up – I sat on board – sat there one minute; was pulled round by Charles Robb; he picked up lap-board, and said, G—d d—n you, Foy, go out. I told him I would if he would give me time – he wielded the lap-board over my head – near first step of stairs William Robb came up and advised me to go down. I said I would if let alone. I went backwards nearly all the way down, in order to see Robb, lest he should strike me. William Robb assisted me out, and behaved in a gentlemanly way.

PETER BIDERMAN, sworn. I was a workman of Robb & Winebrener at time of the difficulty. Saw dress – extras same as others. Samuel Robb came up stairs on Saturday, and asked price of habit; he was told seven dollars. Samuel Robb added up extras – amounted to seven dollars six and quarter cents. Samuel Robb remarked, he thought there was one dollar difference – he was referred to bill – they continued until Saturday – they were discharged – the others quit work. I quit work, because I saw no reason for discharging men for demanding the usual wages.

*Cross examined* by Mr. Wurts. Am a member of the society – was at special meeting when a vote was taken about men's striking. I was there when report was made of the affair, and it was told to them at the meeting to quit – by vote. I had leave of absence – have been at one meeting since. There has been money given. I received it for one. I wanted it. I had no employ – I could get none. Money was appropriated for such as may be called on – I don't know for what. There was a committee; I remember two, Mr. Kelsy was one and Mr. Lacy, to be disposed to such as they thought was wanting.

Adjourned.



[50] Tuesday Sept. 21st, 1827.

GEORGE PICKERING, sworn. Master Tailor, 80, N. Sixth street. I know Mayhew – he never turned me out of his house – I never saw him in his house. I have been at his house. Mr. Miller and I commenced 6th August – had work to do for the west – went to Mayhew's to see if he would do it. I saw a woman there and left word for him to call at our store to see if he would do the work. He called that day, or day or two after. I never persuaded him to work for Robb & Winebrener, except when he asked my advice about that business. I told him he had better wait until the business was settled between the employers and men, that he might not interfere with other people's disputes. I never recollect seeing him at his own house – never spoke to him at his own house.

*Cross examined* by Mr. Wurts. My partner is father of James D. Miller.

JAMES MILLER, sworn. Partner of Pickering. Mayhew called one day at our store. He said he had been informed Pickering had called on him and requested him to work for him. He said he had work, and could not do our work. That is all that transpired then. He called a second time to advise, as I understood, about going to work for Robb & Winebrener. Pickering and I both said, that while disturbance was in the shop, it was advisable for him to stay away, and let the masters and men settle their own differences. Did not otherwise persuade him. Never first introduced the subject to Mayhew.

*Cross examined* by Mr. Wurts. Father of J. D. Miller – do not know whether Pickering and Mayhew had a difference, or that Pickering had been bound over – had no idea of disturbance at Mayhew's – never



at Mayhew's house until this morning, when I went to get an explanation of what occurred yesterday in court – did not see him when I called.

PHILIP LYON, sworn. I was present at a hearing before Alderman Barker – heard O'Neil testify – O'Neil said, Radford was in company with Miller and Scott – did not charge J. Hough. I believe, after the case was over, a commitment was required by Mr. Brown, for Scott, Bates and Skeegs. While Barker was waiting for a commitment, which had been sent for, Mr. Wurts and Winebrener conversed. After this Mr. Wurts said, as Skeegs, Bates and Scott, had been innocently charged, and on the same footing as Crous, they would place them all on the same footing – did not hear Winebrener say he would [51] discontinue the prosecution. I believe five were charged at that time. Ramsay was examined – swore positively to Scott, and Miller, with Radford, – said frequently he had no doubt. He said, on reflection, and time being given by Wurts.

*Cross examined.* Workman of C. Watson's – they admit the bill – I was one of the men who formed it – never knew of any difficulty in relation to the bill. I have known a bombazet riding habit made; six dollars was given for it, and mistake of twenty-five cents. It had no extras. O'Neil swore positively to Radford and Miller, not to Scott – swore positively, over and over, the same, as to Bradford – he may have said, I believe, I suppose. Mr. Brown on the evidence thought it requisite, to send these men to prison; and therefore, he asked for commitments. I think Mr. Barker said, he believed all the defendants equally implicated in conspiring, and therefore, I thought you asked for commitments. Mr. Wurts said, these men

had been innocently brought into a scrape, like Crous. I would have gone security for all of them, Radford and Miller too, if they had asked me. Ramsay swore positively to Radford and Miller, and not sure as to Scott – afterwards, on repetition, swore to Scott. Saw bombazet habit while in hand; did not work on it. For one thin cloak I got six dollars. I believe a woollen cloak is about five dollars. I am a member of three journeymen tailors' societies; to two that meet at Macguire's. At one I have heard money was placed, at the disposal of the committee, for the use of members. Cloak for six dollars was of thin camblet – same price as making a plaid cloak.

By Mr. Brown. When commitment was required, it was understood no bail would be given, and Mr. Brown said, Robb & Winebrener would be liable to action for malicious prosecution, and their prosecution was withdrawn.

CHARLES WATSON JR., sworn. A thin riding habit was made of bombazet at my store, and \$6 paid for it – No extras were mentioned in bill – there was wadding – In August 7th – Never called on by Robb & Winebrener. I asked for list of men and Mr. Winebrener gave it to me. I have dismissed Crous from his employ since the affair. I thought him a dangerous man – he had deceived me – my list tells me he had deceived me – No other reason for dismissing him than the information I had from Winebrener.

[52] *Cross examined* by Mr. Wurts. An inquiry was made at the time of disturbance about the price of riding habits by Mr. Ross, Robb & Winebrener's man. I told him I did not remember what the price of such a habit was – I told him I had not made one. Some days after I referred to books and found the price of

the bombazet habit. There should be the same difference between thick and thin habits, as between coats. We are governed by bill. I think the difference would be between one dollar and fifty cents, and two dollars. Robb & Winebrener, myself, and J. Watson, only pay this bill – there is no other rule but this.

*Cross examined* by Mr. Brown. Boner is a very good man, orderly – been with me two or three years – I think a great deal of him.

MORDECAI HOUSTON, sworn. I was at Barker's office at hearing – O'Neil swore positively to Radford, and he thought Miller was there – after talking to Miller, positively as to him, and thought Scott was there. Ramsay picked out Miller, Radford and Scott, and swore, to the best of his knowledge, they were the persons – he made no difference. The second time he swore positively to the same persons – O'Neil's boy swore without hesitation to the same persons. After Barker said he had made up his mind as to the guilt of them all, Mr. Wurts said they might go to gaol if they pleased. Mr. Brown said it was no choice of theirs. Wurts said, you need not try to frighten. Wurts said, after conversing with Winebrener, that they had been brought innocently into the scrape, as Crous had been. Winebrener said he did not wish to send Skeegs, Bates and Scott to gaol, but would be content with their recognisance to keep the peace.

Am pretty intimately acquainted with the defendants – they are considered civil, nice men, as far as I know any thing about them, that is their general character.

*Cross examined* by Mr. Wurts. Winebrener, when he relieved the three, said something about peace and quiet being all he wanted. I don't remember Wine-

brener's saying he would drop the prosecution if they behaved themselves. Am member of Society. O'Neil's boy swore positively to those three men.

THOMAS JONES, sworn. Was at Barker's office – O'Neil swore positively to Radford and Miller – not positively to Scott – known some of the defendants for eight years – never heard their characters assailed – particularly Radford – known him ever since – honest, industrious, civil man – Boner five years – generally walk home with him – honest, industrious, civil, well behaved man – J. M. Moore four years – in 1823 – acquaintance [53] contracted with him for six months – well disposed, orderly man.

*Cross examined* by Mr. Wurts. Member of Society – have been present at a meeting within three weeks – was present at the meeting when the strike was determined on, when it was determined that men out of employ should have support for their families – never saw a cent appropriated for carrying on a prosecution. With regard to money out of this fund, I have heard money has been appropriated for men in want, when prosecuted, after being assisted themselves.

ROBERT SCOTT, sworn. Gardener and Clerk of St. Stephen's church – was a journeyman tailor – have been in Robb & Winebrener's employ, three and five years at different times – never have worked pongee – rather make two cloth than one pongee – belonged to all three societies – President of society – no rule of society as relates to journeymen working. There are shop rules – no rule of society on the subject of refusal to join – sixteen months since I belonged – I know Boner – peaceable upright man.

MR. HOUSTON, recalled. I believe I was at the meeting when it was determined for Robb & Winebrener's



men to strike – money was appropriated for the support of such men as were out of employ.

JACOB LUKENS, sworn. Master tailor. This bill regulates some stores entirely – did regulate Robb & Winebrener's, when I was in their employ – Winebrener said he was sorry he had struck Boner, that he was sorry he was not nearer his match – he would not have struck him for fifty dollars – he would rather it had been Donahue.

MILLIMAN, sworn. I accompanied Chamberlain from Burden's to his house. I was at home when sent for to go to Burden's. I went. I accompanied Chamberlain. When I went to Burden's I saw no person. Near Washington Hall, five or six men were standing. When Chamberlain got opposite them he stopped – he moved on to Spruce street – he crossed – I urged him on – We went on to Pine and Lombard – some men came up and stopped alongside. I saw Boner civilly pass us, near south side – nothing passed – nothing said. Chamberlain very much frightened. Near Shippen street Winebrener joined us, and asked Ross and Chamberlain to come back. We went back to south side – two young men at the corner – Winebrener asked Chamberlain, if either of these men had disturbed him – Chamberlain looked at them and couldn't say – Winebrener seemed considerably [54] agitated – took hold of one and talked of arresting him. I advised Winebrener that he was going too far. At Shippen street Boner passed us – he said nothing. Winebrener spoke to Boner as he passed by – I urged him to go on – Boner came up and asked whether Chamberlain spoke to me – words came on – I tried to separate them, and sticks began to fly. We lodged Chamberlain at home, and returned – saw no sign of peril.



## [55] MR. WURTS' SPEECH

May it please the Court, Gentlemen of the Jury. . .  
[56] Without further preface, gentlemen, let us in the first place inquire what the law is upon this subject. Although you will doubtless listen with great respect to what you shall hear from the Bench, as the law of the case, still it is proper to present you with our views also, not only because you are the judges of the law as well as of the facts, but that you may the better understand our application of the facts, and that the opposing counsel may controvert the principles we advance, if they deem them erroneous. But I apprehend, that however much we may differ in our conclusions from the facts, yet if there be any thing in regard to which we shall agree in the course of this prosecution, it will be as to what constitutes the crime of conspiracy at common law.

What is a conspiracy, may it please the court? We define it to be a confederacy or agreement between two or more persons, by indirect means, to injure an individual, or to do any act which is unlawful, or prejudicial to the community. This principle is recognised by every book and every adjudication on the subject. I refer in the first place to an elementary work of high authority, 3 Chitty on Criminal Law, page 1139, in which it is said, that "all confederacies wrongfully to prejudice another, are misdemeanours at common law, whether the intention is to injure his person, his property, or his character." The general principle here laid down is illustrated and sustained by a variety of cases to which the author refers, but which I shall not read, to show that such is the well established law in England. And although prosecutions for conspiracy are not of frequent occurrence, yet they have happened

often enough in this country to show, that the same doctrine is recognised by the courts of justice in this state and others.

I refer, in the next place, if the Court please, to a report of the trial of the journeymen cordwainers of the borough of Pittsburg, in the court of Quarter Sessions for the County of Allegheny, in December, 1815. The defendants were there indicted for a conspiracy to raise their wages. Judge Roberts, who presided on the occasion, gave his decision very much at length, and I shall read a considerable portion of his charge, as the general principles which he advances, are entirely pertinent [57] to the present case. He commences with the definition of the offence which I have already given to the Court and Jury, and then says,—

[Here follows a quotation in substance of pages 81-84 from "*Commonwealth v. Morrow.*"]

[58] "Did they conspire to compel an employer to hire a certain description of persons?" The very thing, gentlemen of the jury, with which these defendants are charged in one of the counts of the indictment you are now trying, and which I shall hereafter show you, has been clearly proved upon them. "If they did," the judge adds, "they are indictable. On this subject the evidence is equally clear. They did not indeed threaten to beat the employer, nor to burn his shop. But the means they used were more efficient and menaced them with a punishment more dreadful; no less than a total destruction of his trade, and the means of his subsistence. Did the defendants conspire to prevent a man from freely exercising his trade in a particular place? If so, they are indictable." "Did the defendants conspire to compel men to become members of a particular society, or to contribute towards it? If they did, they

are indictable." We shall show you, gentlemen, when we come to examine the evidence, that the principles here advanced by judge Roberts, are singularly applicable to the case you are trying – and that the defendants now arraigned, have done all the acts which he says are indictable, as a conspiracy. I have, may it please the court, made diligent inquiry for the report of the trial of journeymen cordwainers, which took place in this city some years ago – but without success. I presume [59] the court is more familiar with the principles established in that case than myself; I will therefore only remark in regard to it, gentlemen of the jury, that a trial of the kind did take place in this city – the defendants were convicted, and principles similar to those embraced in the opinion of Judge Roberts, were recognised by the charge of the court, delivered by a gentleman of distinguished legal attainments.

I have before me the report of the trial of journeymen cordwainers of the city of New York, on charges very similar to those in the Pittsburg case. I will not trouble the court and jury by reference to any part of it now, but shall have occasion to do so hereafter. Suffice it to say, at present, that the same doctrine is there maintained by lawyers of no doubtful reputation, who were then upon the bench, and with the same result, for the defendants were found guilty.

The next authority to which I ask the attention of the court and jury is, the Commonwealth *ex relatione* Joseph Chew, *et al.*, vs. John Carlisle; to be found in the first volume of the Journal of Jurisprudence, for 1822, page 225. . . It was a case brought before Judge Gibson, by habeas corpus, on the 5th of February, 1821. The relaters were in custody on a charge of conspiracy. It appeared that they were master ladies' shoemakers,

and that they had agreed with each other not to employ any journeyman who would not consent to work at reduced wages: but, it also appeared, that the object went no further than to re-establish certain rates which had prevailed, a few months before, from which, there was reason to believe, the employers had been compelled to depart, by a combination among the journeymen. In this case, the law is examined with great care, by judge Gibson. In the course of his decision he lays down the following principles, which are strictly applicable to the case now under consideration.

[Extracts from the opinion of Judge Gibson are omitted. See the full case, *Commonwealth v. Carlisle*, reported in Brightley's *Nisi Prius Cases*, page 36.]

[60]. . . The principle deducible from this decision, if the court please, is, that in the class of cases, where the end to be attained by the conspirators, is lawful in the abstract, and its accomplishment is sought by the use of lawful means, the criminality of the confederates will depend on the motive that impels them, or the natural or necessary consequence of the object which they have in view, to prejudice the public, or oppress individuals. In the case now under discussion, the testimony shows that the defendants sought the attainment of an unlawful end, by unlawful means – and that, in most of their acts, they were prompted by a vindictive and malicious spirit against peaceable and unoffending individuals.

Such, gentlemen, being the law upon the subject, the next inquiry is, What are the acts charged by this indictment, upon the defendants? and do they come within the principles I have submitted to your consideration? Or, in other words, Supposing these acts to be proved, are the defendants guilty? On this head I ap-



prehend there can not be any doubt. But let me again ask your attention to the charges; and in doing so, I am enabled to subserve, in some degree, the views of the counsel on the opposite side, who wished the whole indictment read to you before I commenced my argument.

(Mr. Wurts here went into an examination of each count in the indictment. But, as an analysis of it has been already given, in his opening remarks, this part of his argument is omitted.)

The question which you are to decide, gentlemen, is, whether any one of the charges, contained in this indictment, has been proved by the testimony to which you have listened. Bear in mind, that it is not necessary, we should satisfy you that all of these counts are true – if you believe that any one of them has been sustained by the evidence, it is all that is requisite to entitle us to your verdict. If you are convinced [61] that the defendants, did conspire, combine and confederate, to raise their wages above the usual rate in the city of Philadelphia, they are guilty upon the first and second counts, though you should think that none of the others have been made out against them. And if you believe that they did conspire and combine, in the manner charged in the third and fourth counts, to compel Messrs. Robb & Winebrenner to re-employ the workmen whom they had discharged, they are guilty, even though you should be of opinion that none of the other counts are supported by the evidence. And so of every particular count in the indictment. Have we, then, made out any one of these charges? I hazard little in saying, that they are all, most clearly and incontestibly proved by the evidence which I shall proceed, in a moment, to examine. . . .

[Counsel points out the intimate connection of all the counts.]



Now, what are the facts, gentlemen of the jury? The price required by the journeymen for making a lady's riding habit of thin stuff, was \$7.06 $\frac{1}{4}$ , and the price offered by Messrs. Robb & Winebrener was \$6.06 $\frac{1}{4}$ . A number of witnesses have been examined, to satisfy you in relation to the price usually paid for work of this description. You have heard the testimony of Messrs. Jewell, Campbell, Watson, O'Niel and others, all of them master tailors, who have been pursuing the business for many years in Philadelphia. They [62] unite in saying, that according to their experience, there ought to be the same difference between the charge for making a woollen habit and a cotton or thin one, that is allowed between a woollen and a thin coat. That difference they agree in fixing at from \$1.50, to \$2. It is admitted on the part of the defendants that the sum required, \$7.06 $\frac{1}{4}$ , is the full price for making a woollen riding habit. According to the testimony of these witnesses then, the price demanded by the defendants clearly exceeded the usual and fair rate of compensation for such work. Nay, the price offered by Messrs. Robb & Winebrener was above the customary and fair rate, if the opinions and experience of those engaged in the business, are to have any weight in your decision. There is no contradiction or difference of opinion among master tailors on this subject. The testimony given by the gentlemen whom I have named, is not invalidated by that of Mr. Lukens, although the defendants evidently called him with that view. He tells us nothing of his own practice or experience, or that of the trade generally. But a bill of prices, as it is termed, is placed in his hands, and he informs us, that this bill was understood to regulate the price of work in the establishments of Robb & Winebrener and of the Messrs. Watsons, when he was in the employment of the former.

He is not aware that it governs any other establishments – the other witnesses expressly declare that no regard is paid to it elsewhere. The accuracy of Mr. Lukens's recollection, as to the observance of it by Messrs. Robb & Winebrener may well be doubted; for you will remember, that on being asked the question, he said it was two years since he left these gentlemen – on reference to the bill now on the table, you will find that it was printed since that time. It could not have governed Messrs. Robb & Winebrener when it was not in existence.

But this Bill, thus represented as regulating the price of work in only three of the numerous establishments of master tailors in this city, is the testimony upon which the defendants rely, to prove that the sum demanded is the usual and fair price for making a habit of thin stuff. Now let us look at the bill, and see whether it will justify any such conclusion: bearing in mind always, however, gentlemen, that we are inquiring [63] into the usual and customary rate, and that this bill, so far from having an universal, has not even a general operation, and that what may have been done under it, can not therefore establish an usage or custom. But examine the bill for yourselves, and see whether by it, even supposing we are to be confined to it, the defendants are entitled to \$7.06 $\frac{1}{4}$  for making a thin riding habit. It is the price fixed by it, for making a cloth habit with all the extras: but not a word is said about a thin habit. It is a *casus omissus* in the bill, and for a very obvious reason. This article is seldom made in a tailor's shop: and it was therefore deemed unnecessary to give it a place in the bill. It is a striking fact, that after all the inquiry which has been made in the progress of this cause, we can hear of but two thin habits having been

made by tailors: the one by the Messrs. Watsons, and the other the garment now in question. For the making of the former, no more was demanded or paid, as appears by the testimony of Mr. Watson, than was offered by Robb & Winebrener. The question is therefore raised for the first time, and if the bill is to be the guide, a reasonable and fair construction must be given to it. As it contains a positive provision in regard to cloth habits, but none at all in regard to thin ones, we must either throw it aside altogether and rely exclusively upon the testimony of the witnesses who have been examined, or we must decide by reference to other parts of the bill which bear upon the subject. We must reason from analogy – and doing so upon the bill itself, there is no difficulty: for throughout, it recognises a difference, between the price for making woollen and thin garments. This difference is about what has been mentioned by the master tailors who have been examined in reference to it: and the same distinction would undoubtedly have been made between a woollen and thin habit, had it occurred to the persons who framed the bill to introduce the latter into it. But for the reason I have already suggested, no mention was made of thin habits. Take it up therefore as you please, gentlemen; whether upon the testimony of the witnesses or a fair construction of the Bill, the price offered by Robb & Winebrener for making the habit, was rather more than the full price – while that demanded by the defendants, greatly exceeded it.

[64] The fact then is made out, that Radford, T. Hough, Skeegs, J. Wilson, and Scott, did require for their labour a higher rate of compensation than is usually paid for work of this description; and if so, taking this fact in connexion with the manner in which

the demand was made – the subsequent acts of themselves and their confederates – the long train of measures which were pursued to compel Messrs. Robb & Winebrener to re-employ these five individuals, under an implied obligation to pay the wages demanded on all future occasions, the first and second counts are established. But I have promised to be brief; and I therefore leave this part of the case with you; the more readily indeed, as, although these charges are clearly made out, yet I do not consider that the strength of the prosecution lies here. The subsequent counts, as exhibiting offences of a more serious and aggravated character, may with propriety, claim a larger share of our attention.

I pass therefore to the charge contained in the third count, namely, a conspiracy to compel Messrs. Robb & Winebrener to re-employ the workmen whom they had dismissed. This charge is more prominent, and stands out in bolder relief than any other in the indictment. To it therefore mainly, will my remarks be applied; though, at the same time, it will be found as we travel on, that in sustaining this charge, we make out all the others. For, as I have already suggested, the conspiracies and overt acts alleged in the other counts were but the means used to accomplish the great aim and object of the confederacy – the restoration of the men who had been discharged by Robb & Winebrener.

What is the evidence on this head? Let us trace events in chronological order. After the five workmen had been dismissed, the journeymen still remaining in the service of Robb & Winebrener, and who are defendants in this indictment, namely, John M. Moore, Crous, Mead, Donley, Conway, M'Keever, M'Macken, Laboullés, L. H. Wilson, Miller, Page, J.



Hough, Benj. E. Moore and Beatty, determined to call together the Journeymen Tailors' Society. This was their first step in the business: most, if not all of them, subscribed a written requisition for a special meeting of this society, (of which they are all members,) to take into [65] consideration, as the paper expresses it, late occurrences at the shop of Robb & Winebrener. We are singularly fortunate, gentlemen, in being able to prove this important and leading fact beyond the possibility of doubt or denial. By mere accident, we have found and I have read to you, what is no doubt a rough draft of this paper, subscribed by most of the defendants whom I have just named, with others who are not now on trial. I say we are singularly fortunate in being able to produce this paper; for our attempts to bring to light the one actually sent to the president of the society have been eluded in a manner that can not have escaped your recollection. Flagherty, the the secretary of the society, was required, by the subpœna which was served upon him, to produce it in open court. He failed to do so, and Mr. Baush, the president, who appeared to give his testimony with great frankness, testifies that Flagherty told him no longer ago than yesterday, that he had destroyed it. He deliberately committed it to the flames, after having been served with a subpœna, expressly requiring him to produce it. But he has failed in his attempt thus to defeat the proof of the fact—for we have the rough draft of the call, and the president of the society testifies, that most of the names to it, were signed to the paper sent to him, requesting the meeting, which he handed over to the secretary, who is so careful of his records. The same witness was, by the same subpœna, required to produce the minute-book of the society;



and we might reasonably have expected to learn from it, not only the names of those by whom this special meeting was requested, but what was done at it. He produced the book, but it affords us no light upon either of those points. On an examination of it, we find, that it contains the minutes of the society, down to May; but, mark the fact, gentlemen, for it speaks volumes; the next leaf, which should have exhibited the subsequent entries, is rent from the book. We are left to draw our own conclusions as to the time and circumstances under which this leaf has disappeared, and what would have been disclosed by the production of it. I wish not to speak harshly of this witness, or of any one during the course of this trial. But you will bear in mind, the destruction of the paper, the mutilation of the book, and manner in which the [66] witness conducted himself before the court and jury, and draw your own inferences as to him, and the defendants who are connected with him as members of this Society. I am not to be told that he is our witness: he appears before you in the character of an unwilling witness, called by us, because we knew him to be the official organ of the defendants; the chosen depositary of the evidences and records of their acts as an organized body. He is in fact, a party, an efficient instrument in this conspiracy – one of those persons unknown to the grand jury, whom they have presented as combined and confederated with the defendants named in the indictment, for the attainment of their unlawful purpose. The truth, so far as he gives it, is dragged from him with great difficulty; nay, it is manifest that he would most willingly strain a point to serve the defendants; for, in the course of the examination, he obtruded upon us a statement, that is found to be utterly irreconcilable

with fact. He declared, that this was a beneficial society; and yet on an examination of the constitution and bye-laws, which have since been produced, you find that it is there made penal, for any member even to propose that it shall become a beneficial society. It is true that this article was subsequently so far modified by another, as to permit a proposition to be received and entertained at a special meeting for the relief of a member who may chance to be sick: and if three-fourths, not a majority, of those present give their assent, it may become a beneficial society for that particular occasion. But this is a mere relaxation, not a repeal, of the first article, which expressly prohibits any proposition to make it a beneficial society generally; nor can such a resolution be offered by any member, under a penalty of five dollars. And yet the witnesses tell us that it actually is now a beneficial society! I ask you, gentlemen, to carry with you throughout this case, a recollection of these facts; and to give them their due weight: bear in mind, the acts already mentioned, of the secretary of this society, whose representation of its origin, its character, and its objects, is so entirely at variance with what we find in its constitution and bye-laws. They give, to the society itself, to its agency in this matter, and indeed, to the whole case, a complexion very different [67] from that in which the opposite counsel, in their opening, promised to present it to your view. But notwithstanding the destruction of the paper, and the mutilation of the book, we have established the fact, that these defendants did call together their fellow-associates, members of this society, to take into consideration the occurrences at Robb & Winebrener's, to determine what should be done, to oblige those gentlemen to take back into their service, the men whom

they had discharged. And here let me remark, that these gentlemen had an undoubted right to discharge any workman in their employment, when they conceived that his continuance was no longer conducive to their interest; no contract being violated by it, they were at perfect liberty to dismiss every journeyman who required a higher rate of wages than the employer was willing to give. This clear and indisputable right they saw fit to exercise. I can not suppose, for one moment, that, because there were two individuals who came to this conclusion, they are, therefore, to be regarded as combining and conspiring against the interests of the men whom they dismissed. Such a supposition would be derogatory to the professional character of the gentlemen who are opposed to us. Robb & Winebrener are partners in trade; for the better prosecution of it, they have brought together their joint judgments and capacities as a part of their common stock; and, in the proper exercise of these, they decided, that it was no longer expedient to retain those men in their service at the rate of compensation which they required.

The meeting of the society was held pursuant to the call of the defendants; and now having found our way into their council chamber, having placed you by their side at the council board, let us see what plans were laid, what measures were devised to accomplish their object. They have been detailed to you by several witnesses, who are members of the society and were present on the occasion. They name to you the defendants who were at the meeting, enumerating all of them, with two or three exceptions, whose presence is not remembered. They tell you that a resolution was formally submitted and finally adopted, declaring that the journeymen who yet remained in the service of Robb

& Winebrener, [68] should strike, unless these gentlemen would agree to re-employ the men whom they had dismissed. The morning after the meeting, Page, one of the defendants, told Rayfield, an apprentice to Robb & Winebrener, who has been examined here, that the society had met the night before—that it was at first proposed to scab the shop, but it was finally agreed that they should strike unless the discharged men were restored. Those of the defendants to whom this part of the plan was confided lost no time in executing it. For it appears that the morning after the meeting, all of them except Laboullés and Page, came down from the work-shops to the store, with their unfinished work under their arms, and told Mr. Winebrener, some two or three of their number acting as spokesmen for all, that they would do no more work unless the discharged men were re-employed. Mr. Winebrener reasoned with them against the injustice and impropriety of such conduct—pointed out to them the injury that would result to him if they abandoned their work in an unfinished state—told them that they had contracted to finish it by a particular time—urged them to do so and receive their money—and added, “if you then think proper to go, who shall say no?”

But it was in vain that these considerations were pressed upon them; they again declared that unless he would agree to take back the discharged journeymen, and thereby place himself under an implied obligation to pay them the rate of wages they had demanded, they would throw up their work. He replies, “it will not suit us to do so;” whereupon they one and all threw down their jobs and left the establishment, without a single hand to take up the work which they had abandoned. Laboullés and Page were not present at the



interview, but they were parties to the act, for they left the place at the same time with their associates.

Here then, gentlemen, the conspiracy was completed – the crime was consummated. If nothing more had occurred – if nothing further had been done or attempted by the defendants who were present at the meeting of the society, and who subsequently abandoned their work, they would be guilty of the offence for which they are arraigned, according to the legal authorities which I have submitted to you. . . .

[69] . . . For look at their conduct one moment in connection with what has been given in evidence in regard to the general character and object of this society – their immediate and efficient instrument in effecting the purposes they had in view. What are the rules of this society to which every member is expected to conform? They have been proved by a number of witnesses who have been called before you. Whether they be written rules or not, we can not say – for, although a book purporting to contain their constitution and bye-laws has been produced, yet I have had no opportunity to examine it with much care during the course of the trial: and it abounds so much with alterations, interlineations, and erasures, with here and there a missing leaf, that I did not think it prudent to take it out of the Court room for the purpose of inspecting it more minutely. But whether these rules be written or not is wholly immaterial: they are in existence and in full operation – proved to be so by the acts and acknowledgments of the defendants themselves – by the evidence of members of the society, as well as of Mr. William Robb, and Mr. Mitchell, the last of whom had been a sufferer under them, having been compelled to join the society, when his pecuniary means rendered it difficult for him to pay the initiatory fee.



He and other witnesses tell you, that according to one of the rules of this society, if a journeyman tailor who is not a member of it, should go to work at a shop where there are members of the society at work, and he should continue there beyond a certain time, I think they say two weeks, without joining the society, those members of it, who continue to work with him after that period, incur a fine of twenty-five cents each, to be paid to their treasurer. This is the rule of the Society, by which they sometimes levy contributions on their own members. But then comes in what has been called the [70] shop rule, or pitcher rule, by means of which the members of the society generally manage to shift the burthen from themselves and throw it either upon the master tailor or the new hand whom he has employed. The latter is required to join the society within the time prescribed – if he refuses to do it, the employer is required to dismiss him – if he declines doing it, those who are members of the society throw up their work, or strike, as they term it, and leave him to get on with his business as he can.

The consequence is obvious. The master tailor, rather than sustain the inconvenience and mischief of having his business interrupted, by the unfinished work being thrown on his hands, will submit at once to the requisition made upon him; and the prescribed individual is turned adrift upon a heartless world, to seek his bread where he can find it. In such establishments, for example, as those of Robb & Winebrener and the Messrs. Watsons, self preservation would dictate the course to be pursued. Promptitude and punctuality is the life of their business. They would not disappoint their customers: their business must go forward at all risks; and the unfortunate journeyman who might think it morally wrong to join such an association, or whose

means might not enable him to pay the price of admission, would be instantly discharged. Cast off and outlawed by those of his own craft, he would be reduced to a state of absolute penury, and consequent dependence upon those who enact and execute these arbitrary and oppressive rules for the government of the community.

Some of the witnesses, in answer to questions put to them touching these rules, have asked if they are not freemen, and have not a right to adopt such regulations as they think proper? What perverse and erroneous notions of freedom does this imply? I trust, gentlemen, there is some difference in your estimation between liberty and licentiousness. I hope I estimate the privileges of a freeman as highly as any one in the community. I would not be instrumental in bringing into question any one, even the slightest, to which the most humble among us may fairly lay claim. But our political and civil rights are established on too sure a foundation to be in any danger. They do not require the fostering care and support of the bye-laws and regulations of this society. I cheerfully concede [71] that it has a right to adopt such rules as it may see proper, provided the operation of them be strictly confined to its own members. But with this they are not content – it is not sufficient licence for them. They go far beyond it, and draw into their vortex, those who are in no wise connected with them, except as pursuing the same business. The moment a strike takes place against any particular shop, the agency and support of the Society is called in, to give effect to the measure – for by another rule which it has adopted, and which was actually put in practice in the present case, no member of the society is permitted to work for the master tailor who is thus placed under the ban, nor for any

one who undertakes to assist him. And here, I beg leave to call the attention of the Court and of you, gentlemen of the jury, to the striking analogy in this respect, between the New York case, and the one we are now trying. There the defendants were members of a society which had in its constitution, an article substantially the same with the rule, which, whether written or unwritten, we have shown to be the cardinal principle of the journeymen tailors' society, of which these defendants are members. I think it highly probable, that some of them are sufficiently familiar with this, as well as the Pittsburg case, to know, that it was not prudent to exhibit such a rule upon the face of their constitution. But they have it—and practise it. I care not whether you call it the shop rule, the pitcher rule, or the rule of honour—it exists, and is the life and soul of the society—the means by which they attain the chief ends of their combination. It operates silently and unseen, but surely, steadily, and with absolute certainty of producing the results contemplated. They have in practice, the rule which is here contained in print, in the eighth article of the Constitution of the Journeymen Cordwainers' society of the city of New York.

“No member of this society shall work for an employer, that has any Journeyman Cordwainer, or apprentice, in his employment, that does not belong to the society, unless the Journeyman come and join the same; and should any member work on the seat with any person or persons that has not joined this society, and do not report the same to the President, the first meeting night after it comes to his knowledge, shall pay a fine of one dollar.”

[72] This is the mischievous and oppressive rule which was in operation among the associated journey-

men cordwainers of New York, by which they tyrannised over their employers and fellow journeymen, until the firmness and independence of a Court and Jury put an end to it there. It is the same rule under which the same oppression has been, and will continue to be practised here, unless suppressed by your verdict. I pray your particular attention, gentlemen, to the cogent remarks of the court in that case, on the mischievous and oppressive nature of a combination, acting upon such a principle. You will perceive at once how strictly applicable they are to the matter before you. "It appeared in evidence," says the judge, "that the society of journeymen, of which the defendants are members, had established a constitution or certain rules for its government, to which the defendants had assented, and which they had endeavoured to enforce. These rules were made to operate on all the members of the society, on others of their trade who were not members, and through them on the master workmen; and all were coerced to submit or else the members of the society, which comprehended the best workmen in the city, were to stop the work of their employers. One of the regulations even required that every person of their trade, whom they thought worthy of notice, should become a member of the society, and of course become subject to its rules, and in case of neglect or refusal, it imposed fines on the person guilty of disobedience. When the society determined on any measure, it found no difficulty in carrying it into execution."

And so has it been with the society of which these defendants are members. Until this stand was made by Messrs. Robb & Winebrener, it never found any difficulty in carrying into execution any measure, on which it had determined. It depends upon you to say, whether



it shall continue arbitrarily to rule every man in the trade. It is not a question between it and Robb & Winebrener merely – it is one in which every individual in the community, but especially every tradesman and mechanic is deeply interested – in which his peace and prosperity, and consequently the comfort and happiness of himself and family are directly involved. I speak the words [73] of soberness and truth when I say so – I am warranted to say so by the facts which have come before us in this case. If the acts that have been done under this rule, which is a bond of union and brotherhood among the members of this society, but a weapon against all the rest of the world, are to be sanctioned by your verdict, a principle is thereby established, which to-morrow or next day may be visited upon yourselves – sooner or later, I undertake to say, without possessing the spirit of prophecy, the mischief of such a precedent will be brought home to yourselves, if you declare these defendants guiltless upon the facts which have been proved against them.

But to return to the charge of the court, “When the society determined on any measure, it found no difficulty in carrying it into execution. If its ordinary functions failed, it enforced obedience by decreeing what was called a strike” (the very thing done in this case, gentlemen) “against a particular shop that had transgressed, or a general turn out against all the shops in the city, terms which have been explained by the witnesses, and were sufficiently understood. These steps were generally decisive, and compelled submission in all concerned. Whatever might be the motives of the defendants or their object, the means thus employed were arbitrary and unlawful, and their having been directed against several individuals in the present case,



it was brought, in the opinion of the court, within one of the descriptions of the offence which had been given." The jury thought so too, gentlemen – and they found in that case, as I am persuaded you will do in this, a verdict of guilty.

I therefore most confidently repeat the proposition which I have already laid down, that if you had nothing else before you, but the fact that these defendants had called a special meeting of this society, and after grave deliberation, had passed a resolution which is proved to have been adopted, decreeing a strike against the shop of Robb & Winebrener, you would be bound to convict them. But when this resolution is executed by an actual strike, there can not be a shadow of doubt. That however is not all – they did not stop there. It was not only resolved at this meeting of the society that the hands of Robb & Winebrener should strike; but the funds of [74] the society were put in requisition to give efficiency to the blow. The money raised by the operation of those rules which we have been reviewing – the fund created by contributions levied upon the willing and the unwilling, is the very fund, out of which these individuals are to be supported after the strike takes place. It is in evidence that some of them have received it – it is in evidence that money was appropriated by a vote of the society, for the express purpose of providing for the obvious consequences of a strike, and that it was placed at the disposal of two members of the society. The witnesses will neither affirm nor deny that it was to be used to defray the expense of defending this prosecution. But they tell us that it was paid over to members, to be applied by them in such a manner as they might think proper – and one witness said, to defend suits that might be instituted against

them. Therefore if we rested our case here, and went no further, it is so clearly, so conclusively, so irresistibly made out, that you can not hesitate as to your verdict.

But in opening the case on behalf of the commonwealth, I told you, gentlemen, that if the defendants themselves had been content to stop here – if they had been satisfied with throwing up their work, and had left Robb & Winebrener undisturbed, to provide for the consequences of this act in the best way they could, you never would have heard of this prosecution, so far at least as it depended upon them. It is not, it can not be the interest of any master tailor to have a quarrel with such a body as the journeymen tailors' society of Philadelphia. Self defence, self preservation alone, would never prompt any master workman to come forward, single handed, unsupported by those in the same line of business, to meet an association of this kind. And, therefore, if Robb & Winebrener had been permitted by the defendants after the strike, to employ such other journeymen as they could find, or to have their work done by such master tailors as were disposed to assist them in this exigency, this prosecution would not have been commenced.

But to stop mid way in their career would not answer the purpose of the defendants. It would not restore them to their former situations. They had struck – they had scabbed the [75] shop – they had provided money to support those who were thus thrown out of employment. But Robb & Winebrener had not yet yielded to their requisitions. They had not restored the discharged men, nor invited the others back. They were disappointed. They had expected that a pressure of business, and the mischievous consequences of inter-

ruption and disappointment in it, occasioned by their striking, would have produced a very different result – and that in the course of a day or two, they would all be at work again on their own terms. But that turned out not to be the case. Robb & Winebrener bore up manfully against this wanton and unprovoked effort to oppress and injure them. They employed such journeymen as they could find – they solicited and were promised the assistance of other master tailors. What then were these defendants, now stimulated by passion and malice, as well as interest, to do? Robb & Winebrener must by some means be brought to terms. They must be reduced to the necessity of re-employing the confederates, and at such wages too as the latter might arbitrarily fix. To affect this, it was necessary to prevent work being done for the establishment by any one. They arrange their plans accordingly, and enter zealously and heartily upon the execution of them.

In this stage of the business it is, gentlemen, that we find the active agency and co-operation of Donahue, Boner, Koons, Bates and Hunter in the measures of the confederacy. None of them had been in the service of Robb and Winebrener – but Donahue, Boner, and I think Bates, are members of the society. Whether the other two are or not, does not distinctly appear. With regard to Fulse, we say at once, that there is no evidence against him; it is an error in names. Parkinson should have occupied Fulse's place in the indictment, instead of appearing here as a witness. But all of the defendants, except Fulse, being now in the field, let us see how the war was now waged.

Their first step was to ascertain who were the new journeymen employed, and what master tailors had undertaken to aid Robb & Winebrener. And how was

this done? You have a mass of uncontradicted testimony to show that the defendants were now to be seen, day in day out, as one of the witnesses expresses [76] it, keeping watch and guard, in groups of three or four, at the corner of Third and Chestnut street—of the alley near the Post Office, and at every nook and point from which they could keep an eye on the store of Robb & Winebrener and ascertain who were going in and out. We see here the agency of Donahue and Bates, and at a somewhat later period, but in rather a different form, that of Boner, Koons and Hunter. The moment any one apparently engaged in the business of Robb & Winebrener, left their store, one or more of the defendants followed him. If a new journeyman, the object was to ascertain his residence and connections, so as to detach him from the service. If it was the man who carried out the unfinished work to the master tailors, he was dogged until the shop to which the work was sent could be identified.

You will recollect the testimony of Ramsay, who was the individual employed to carry out the work. From his evidence, as well as that of Mr. Winebrener, it appears, that he was repeatedly followed by one or more of the defendants, while engaged in this duty, I will instance particularly the occasion, when he was going I think to Clever's Alley. He was followed by Benjamin Moore, and after doubling and turning, and finding it impossible to evade his pursuer in any other way, he ran and turned into a court, where he remained until Moore having lost sight of him, gave up the chase. But on his return, he found Moore, with M'Macken and some other of the defendants, at the corner of Fourth and Chestnut Streets. M'Macken stopped him, and asked him where he had left the job, which he



declined telling. At another time he was followed by Donahue and J. M. Moore, as he was going with work to a shop in Chestnut Street. On his return, they stopped him, and Donahue asked what he had left there, remarking at the same time, "you can tell me, for you know I am a countryman of yours, and would not hurt you." True to his employers, he again refused to tell. But on the same day, he was again stopped by the same two, with others in their company, and asked what he had left at Mr. Jewell's, from whose shop he was just returning. On this occasion, he told them what he had left; when some of the number remarked, "that's right, that is what we want to know." At another time he was followed [77] by Radford to a place in the northern part of the city, to which he was taking some of the unfinished work. Mr. Chamberlain was followed by this defendant in the same way, when going to some places in north Fifth Street, and from there to Ninth Street. Now, you can not mistake or doubt the object for which this constant watching and pursuit took place, when you connect it with what afterwards occurred: for it invariably happened, that some of the defendants made their appearance at the several places to which work was sent within a few minutes after Ramsay left it, and then used the means to which I shall presently call your attention, to prevent the work being done. It is the motive and object of the defendants in thus assembling, keeping guard, relieving each other regularly, and dogging the workmen and runner of Robb & Winebrener, that I wish now particularly to impress on your minds. It was unquestionably to ascertain who were the new journeymen, and who the new master tailors that had undertaken to do the work they had thrown up, in order that they might execute the meas-



ures they had devised, to prevent, either by intimidation or persuasion, any one from working for Robb & Winebrener.

And what were these measures? Let us trace them. It appears from the testimony of Mr. Campbell, a partner in the establishment of Mahan & Co. that they had undertaken to finish a coat for Robb & Winebrener. This the defendants knew; for it is in evidence that some of them followed Ramsay when he carried it there. Kerr, one of the journeymen of Mahan & Co. tells us that Miller and L. H. Wilson came to their shop to talk over the disturbance with Robb & Winebrener, and doubtless it was then arranged that no work should be done for those gentlemen by Mahan & Co. The understanding at any rate was had in some way – for the journeymen of Mahan & Co. so soon as they discovered that the coat had been sent there by Robb & Winebrener, informed their employers, that while it remained in the house they would not do a stitch of work of any kind; nor did they. For to prevent their shop from being scabbed, Mahan & Co. were obliged to send the garment out if it. They did not send it back to Robb & Winebrener unfinished – but they could not have it [78] done in their own shop even by one of their apprentices, for fear of bringing upon themselves the same difficulties under which those gentlemen were labouring. They sent an apprentice with it, to the dwelling house of one of the firm, and it was there finished. They were not allowed to employ their own apprentice in their own shop, to do the work which they considered it right and proper to do: for so long as it continued there, the journeymen refused to work. Here then you have the case, as charged in the four last counts, clearly proved. Here is a conspiracy – a

clear conspiracy consummated – the purposes of the conspirators fully accomplished by the injury and oppression of those who undertook to work for Robb & Winebrener, and through them by the injury and oppression of Robb & Winebrener themselves. For though Mahan & Co. were not journeymen of Robb & Winebrener, yet they had undertaken to do this work for them, and were therefore, for the time being, in their service. But by the conduct of these confederates, operating through the medium of the society and of the committee who went to their shop, Mahan & Co. were prevented from having the work done there. The strike against the shop of Robb & Winebrener was to be maintained, and actually was maintained, by the journeymen of Mahan & Co. refusing to do any work for their employers, while the garment in question remained in the shop of the latter. These counts are therefore made out beyond the possibility of doubt.

In a few minutes after a garment was sent to Mr. Jewell, who had also undertaken to aid Robb & Winebrener in this extremity, Donahue presented himself, and inquired of Mr. Jewell, if such work had not been sent there. He knew well that it had, for he had previously ascertained the fact from Ramsay who took it. Mr. Jewell does not think that Donahue had any communication with his journeymen that evening. But I apprehend you will not have much difficulty in believing, that some of those interested, did not lose much time in letting them know that this work had been sent by Robb & Winebrener. At all events, the men knew it the next morning. They then told Mr. Jewell, they would do no more work while the article remained there. They struck [79] – and as it was important that his own work should go on, he was compelled to send back

the garment unfinished, not a single stitch having been put in it. Here the four last counts are again made out. Mahan & Co. succeeded in getting the work done by sending their apprentice somewhere else to do it – they thus partially evaded the operation of the conspiracy. Not so with Mr. Jewell. Like Mahan & Co., he was for the time being, in the service of Robb & Winebrener, and had undertaken to do this particular piece of work for them. But he was prevented by the stand taken by his men, who are members of the society, and were no doubt present when the resolution passed, directing a strike against Robb & Winebrener's shop. It is true, the injury to Jewell was not serious: but suppose it had taken a different course – suppose Mr. Jewell had been of a different temperament, and, (his spirit being roused by this attempt to grind down, and oppress his neighbour,) he had said, I will not submit to this dictation. If you do not choose to do the work that is sent up stairs, you may leave me. I will not have in my employment any man who will not work upon any garment I may place before him. What think you, would have been the consequence, gentlemen of the Jury? Why they told him very plainly what the consequence would be – that they would strike, they would do no work: in fact they did strike, they did no work until he sent the garment back. If he had held out, he would have been precisely in the same predicament with Robb & Winebrener; and if he could not have obtained help elsewhere, he must have been destroyed and broken up in business. . . .

But this is not all, they did not stop here. For shortly after the work was sent to O'Neil, three of the defendants now on trial, made their appearance there, for the purpose of stating the controversy between themselves

and Robb & Winebrener, [80] this was their errand, as they told Mr. O'Neil. He swears positively to Radford and Hough, as two of the individuals, and he believes Miller was the third. . . .

[Comments upon the credibility of Mr. O'Neil's identification of the parties who visited his shop and upon the inconsistency of his testimony and that of Mr. Ramsay are omitted.]

[82] . . . But let us pass, gentlemen, from the comparative credibility of the witnesses to the facts themselves. The three individuals entered O'Neil's shop a few minutes after the work was left there, and commenced a conversation, in which they used all the argument, address, and ingenuity, that they were masters of, to induce O'Neil not to do it. This is a fact not disputed. It is a clear case that there were three of them – and they were three of the four individuals whose names have been mentioned. Fix it on which three you will; you may take Hough and leave Scott, or take Scott and leave Hough. For all the purposes of this prosecution, it is immaterial. Three of the four were there, and exerted themselves to the utmost to induce O'Neil not to do the work. They appeal to his interest and feelings – they speak of the injustice to themselves, and insist that it is ungenerous thus to interfere with their calculations and arrangements, and to defeat their views and measures. He told them that he had heard the whole matter before – and that the representations made on both sides were substantially the same. They press still more on the ground of interest. They tell him, if you and other master tailors [83] would refuse to work for Robb & Winebrener, that which they now have to do, must be distributed through other shops, and you will get your proportion.



Don't you act unwisely? Are you not standing in your own light? Don't you mistake your own interest? Had you not better join with us? Come, join with us, become a party to this strike – be an associate and confederate with us; scab the shop, and bring them to a condition, in which their customers can get no work done by them; they will then have to apply at other shops, and you will get your portion – Come, take your chance in the chapter of accidents. Mr. O'Neil says, No. I see no reason why I should not do this work – I think it is not wronging any man – I have a family, and I must provide for it – I must do work when it is put before me to do. It is not my duty to commit myself to the flood, and embark in this crusade. I will do this work, and all and any other work that is sent for me to do, unless I have stronger reasons than any which you have advanced. He declined their proposition – and here, they were not so successful; but they succeeded at Mahan's, and at Jewell's. It does not, however, render their crime the less – it does not excuse them one tittle, for they omitted no means suggested to their own minds to accomplish their purpose. They are therefore guilty on the four last counts of the indictment, on the testimony of O'Neil alone.

Upon the testimony which I have just detailed to you, they can not escape a conviction on these charges, unless you, gentlemen of the jury, mean to say that these things are right, and that they may be done hereafter with impunity. That it shall not only be lawful for journeymen to strike and refuse to work themselves, but to go much further – to scab, as they term it, the shop of their employer, and devote their time, their money, and their combined energies, to the mischievous and ruinous end, of preventing any person whatever



from working for him. To avoid so pernicious, so destructive a precedent, you must convict these defendants and turn them over for judgment to this court. And I apprehend, that following the example of others, before whom similar trials have been had and verdicts rendered, they will pronounce judgment in mercy.

This prosecution has not been instituted from vindictive [84] motives: no one connected with it is prompted by feelings of that kind – they have not been manifested by the counsel – they have not been evinced by Robb & Winebrener. They are the sufferers throughout every stage of this business; and it must be apparent to you, that they never raised their hands by way of resistance or remonstrance, until they were obliged to do it in self defence. If you mean to say, gentlemen, that because we live in a land of freedom, two of your fellow citizens, who have been guilty of no offence, who are known to you and to every one in this community for their enterprise, industry, and honest efforts, to support their families, and acquire that wealth which it is the laudable ambition of every man to accumulate – if, led astray by idle declamation about liberty, equality, and freedom, you mean to say that such men are to be bound hand and foot, and delivered over to the tender mercies of this remorseless confederacy, given up by you and the court to a band of daring and desperate conspirators, if you mean to say and do this, gentlemen of the jury, give your verdict for the defendants! And when you have done so, go home, lay your heads upon your pillows, reflect upon the ruin to which you have consigned those who in vain appealed to you for protection, and think how soon you may become the victims of your own verdict! Remember that the measure which you now mete out to others,

may ere long be meted unto you. The fate of Robb & Winebrener may hereafter be yours – you may have to claim the interposition of a court and jury, to save you from being trampled in the dust by the unbridled malice of others – then shall a verdict of acquittal in this case, be justly read to you, as the law which you yourselves have established.

Look at the condition of the individuals who have been the suffering objects of this persecution, appealing to you, as their only refuge from the blasting and withering influence of a combination, whose power and energy they can neither elude nor resist – who say by their acts, we will pursue you with a malice that never tires, with a vigilance that never sleeps – we will reduce you to the condition of paupers! Yes! you and your families shall become dependent on the public bounty, unless the fruits of your industry have already placed [85] you beyond the reach of our measures. If you mean, gentlemen, to place any man in this community in such a situation by the verdict you are about to give, all I ask is, that you will remember, it may be your fate to-morrow. You sit here to-day with power to establish the law under which we must all live. Power! nay, I will not speak of it. You sit here to discharge the high and solemn duty of protecting your fellow men against wanton and unprovoked aggression – to sustain and vindicate those laws, to which alone we can look for safety and security in our persons and our property. If you mean to disregard those high duties, then, indeed, is our boasted freedom, which has been so much talked of, and will no doubt be hereafter talked of, in the course of this trial, a mere phantom – an idle word – less that a word – it is nothing. Even despotism itself is better: for the despot will seldom overturn his own

power – he will be careful so to exercise that which he holds, as to preserve and sustain it. He will see that justice is done between man and man, however much he himself may tyrannize over all. But a verdict of acquittal in this case does in effect resolve society into its original elements – the strong man may be safe – but the weak will be his victim. . . .

We have shown you, gentlemen, that persuasion was resorted to – that art, intrigue, promises, every thing which ingenuity could devise, and activity bring to bear upon the object, these defendants put in requisition for the attainment of their views. In some instances these means were effectually used: in others, owing to the manly firmness which I have no doubt will characterize your verdict, they fell short of their [86] aim. The defendants are nevertheless not one tittle the less guilty.

But when persuasion would not do, when threats would not do, when force would not do, then that which, it is supposed by many, will effect every thing – that which is deemed the most efficient instrument of corruption – that which seldom fails to accomplish the will of its possessor, was tried by these defendants. Gold, gentlemen, gold is offered. Money and a fit instrument to use it, are not wanting. Mr. Koons, the ready, wily, active agent of this confederacy, insinuates himself among the new workmen of Robb & Winebrener. Their own premises are not sacred. It is in evidence, that they were obliged to lock their doors, to prevent intrusions of this kind. But Mr. Koons watches his opportunity: he finds his way into the workshops of Robb & Winebrener. He knows but one of the new journeymen there at work, Jacob Kline, a witness whose veracity has not been questioned. And what is his testimony? He tells you that Koons came

there, and called him out of the workshop into a side room, and there attempted to accomplish the object of his mission, by urging that they ought not to work for Robb & Winebrener – that it was wrong – that there had been a strike against the shop – that journeymen must stick together – that they had nothing to fear – they would be in no danger of wanting money – it was already provided – the funds are ready – come to M'Guire's, where the Society meets – tell your fellow workmen to come – don't disappoint us – come round and bring them with you at two o'clock – the money is ready and shall be counted out to you, provided you will throw down your work and scab this shop. Such was literally the language of Koons. But Kline, like O'Neil, was governed by proper views and sound principles; not believing it right to become a party to this confederacy, he at once rejects the proposition – he maintained his right to work for whom he pleased – declaring, that he violated no duty to his fellow journeymen by working for Robb and Winebrener, and that he knew of no reason why he should not continue where he then was. Like O'Neil he had a family to support, and like him, he believed it better to rely on the steady and honest fruits of his own industry, [87] rather than on the casual and uncertain aid of men governed by such motives as Koons's conduct indicated. But Koons did not stop with an offer of money, he accompanied it by a threat, that if they did not come at the hour fixed, all their names should be published in the newspapers, and they brought into odium and disgrace as traitors to the rights and duties of journeymen tailors. But he was baffled in his object. Kline adheres to what is morally right; and I am sure that those who would have enticed or driven him into a different path, now stand before a



jury who will adhere to what is legally, as well as morally right. Kline did not go – but the fact charged is nevertheless proved – the offence is fixed on the confederacy. That count in the indictment which charges these defendants with having maliciously and wickedly conspired and combined to seduce and entice by promises of money or otherwise, and to intimidate and drive by threats, Jacob Kline and others, from the service of Robb & Winebrener, is proved so that it can not be doubted. And being proved, I can not for a moment doubt the judgment you will pass upon it – for conduct like this will not be sanctioned by your verdict.

Master tailors have their rights, gentlemen, as well as journeymen. If master tailors should form a combination, to oppress and tread journeymen in the dust, I should entertain the same feelings and hold the same language that I do in regard to this unhallowed confederacy, now impelled by no better motive than a wish to wreak its vengeance on two unoffending individuals. If the measures of this confederacy had been brought to bear on master tailors generally, the obvious consequence would have been that we should have had combination against combination. Master tailors would have got together, and united in a determination to employ no journeyman who was a party to the conspiracy. Such a state of things would have been prejudicial to both, and to the community generally. But so far as regards the guilt of the accused, I should, under such circumstances, have regarded it light as a feather, in comparison with what is now thrown into the scale. Those, against whom this confederacy has been acting with the most bitter rancour, have not the energy, strength, and power, which numbers give, to resist combinations of this [88] kind. Beside, there is mal-

ice, the essential ingredient of crime, in the conduct of these defendants, and it is brought to bear on a single individual. I say a single individual – for it is against the establishment of Robb & Winebrener, sustained by their joint funds, skill, and industry, for their support and advancement in life, that the vindictive measures of this confederacy are directed. Its object now is to break up this establishment – and it is therefore precisely the case of a conspiracy against a single master tailor.

There are but a few more facts, gentlemen, to which I must beg your attention, and then I shall be done. Among them is the attack on Chamberlain in Third street.

[Comments on the testimony of Mr. Chamberlain and of Mr. Parkinson are omitted.]

[94] . . . We have gone through a mass of evidence, to show the unwearied and systematic efforts of these defendants, to drive, coax, or seduce workmen from the employment of Robb & Winebrener, with a view undoubtedly either of forcing themselves back into the service they had abandoned, or of gratifying their vindictive feelings against Robb & Winebrener, by laying them prostrate at the feet of the confederates, ruined, and broken up in their business. But, in addition to the facts which I have already brought up in review before you, there were things done by these defendants at M'Guire's, (the council chamber of the confederates, to which my colleague has given a proper name,) that are equally conclusive with the matters I have been examining, to show the determined purpose of the defendants. Let us devote a few moments to the story of John Shields. He was in want of employment, and was inclined to go to Robb & Winebrener to seek it. But he was taken to M'Guire's, by some member of

the society, and shown into a room where a number of persons were assembled. How many of the defendants were present we do not know. But he points out Skeegs as one. He was there told, that it was of no use for him to go to Robb & Winebrener's; he might get work, but would not be permitted to work in any regular shop afterwards. Some of them told him to call round at Watson's, and they would intercede for and get him a job. In consequence of what was said to him, he did not go to Robb & Winebrener's. It is not to be doubted, however, but that he would have done so, but for the interference of the defendants. He was destitute, and in search of work. He was anxious to obtain it, as he expressly declared, in some such establishment, where he could make himself better acquainted with business. If left to himself, therefore, he would have gone at once to Robb & Winebrener, and remained with them to this time. But influenced by what he hears at M'Guire's, he avoids the scabbed shop, and calls at Mr. Watson's, as the confederates requested him to do. They however fail to keep their promise to get him [95] a job there; and pressed by his necessities, to use his own emphatic words, "wanting some copper against Saturday night," he is at last compelled to go, and does go to the scabbed shop, the outlawed establishment of Robb & Winebrener. But you will remember, gentlemen, that he did this with fear and trembling. He was afraid to enter it while any of the defendants were on duty as sentinels: and finding some of them at the alley near the Post office, and others at the corner of Third and Chestnut street, he passed round the corner, and watching until an opportunity offered, he "slipp'd in." They gave him work – but his motions did not escape the vigilance of the defendants. They soon made him

feel the consequences of acting contrary to their supreme will and pleasure. For although he could not identify the persons, who intercepted him, a night or two after, at the corner of Fourth and Chestnut street, yet I apprehend, gentlemen of the jury, you can not doubt, but that some of the defendants were of the number. He was stopped, surrounded, and treated with violence, but finally told that he might pass for that time; but to beware of being again caught in the service of Robb & Winebrener – for the consequences would be serious to him. He took warning accordingly, gentlemen: for he quit working for Robb & Winebrener instantly, although he had not yet finished the job in hand. He thought it better to submit to his necessities, urgent and distressing as they were, than to encounter the fierce vengeance of this confederacy, with which he was threatened. Here then is the charge again fully made out. I care not whether you call it persuasion or threat – it was one or the other; and by one or the other of these means, was this individual prevented in the first instance from going into a service which he was anxious to enter – and finally when impelled by necessity, (that being paramount for a time to every thing else,) he sacrificed his fears to his wants, and did actually enter this service, he was driven from it by the threats and violence of the defendants. So much was he in terror of this combination, that he would not go out after night, for fear, as he expresses it, “of getting another clink from the persons who had overhauled him at the corner of Fourth and Chestnut street.” By the testimony of this witness, who stands before you unimpeached [96] and uncontradicted, both charges are made out – the one to injure and oppress Robb & Winebrener, by seducing and driving workmen



from their service – the other to injure and oppress John Shields. They have actually injured and oppressed him. For they prevented him, pressed by poverty and want, as he has told you he was, from earning an honest livelihood, in that service in which he had been anxious to enter, and in which his industry would have yielded him a comfortable support, had he not been driven from it, by the lawless acts of the defendants. . .

I shall conclude in the emphatic language of the judge who presided at the trial of the Pittsburg conspirators. "Upon the whole, that this is an indictable offence of the common law, we have no doubt. It was never doubted but 'that where divers persons confederate together by indirect means to impoverish or prejudice a third person, or to do acts unlawful or prejudicial to the community,' they are indictable at the common law for a conspiracy. To decide this case then, put this question to yourselves; 'from the evidence we have heard, are we satisfied that the defendants did confederate together by indirect means, to impoverish or prejudice a third person, or [97] to do acts unlawful or prejudicial to the community?' If you are satisfied that they did so confederate together, in all or any of the several ways which have been stated, you ought to find them guilty."

Such was the solemn charge of a judge on the bench: and he places before you in language as clear and strong as can be used, the duty that you have now to discharge. It is precisely that of the Pittsburg jury – a place second to none perhaps in our country, in the number and variety of handicraft employments, in which journeymen are engaged. After examining all the evidence in that case, I venture to affirm, that it was not so strong a one as the present. Yet that jury, sur-

rounded as they were by a community of journeymen, acted fearlessly and firmly. "They found the defendants all guilty," says the reporter, "but — and the court fined them one dollar each, and the costs of prosecution." . .

[99] SPEECH OF DAVID PAUL BROWN, ESQ.

With deference to your Honours. . . [101] . . .  
This is a charge of conspiracy — and may be divided, as may most subjects, submitted to this tribunal, into, First, Matters of Law. Secondly, Matters of Fact.

With reference to the first division of the subject, let us briefly consider — the character of the offence — the principles governing in the construction of the indictment, and the general law relating to conspiracy; under which last head, we may aptly embrace the authorities of the opposite counsel. . .

What then is a conspiracy? It may be defined to be "an agreement between two or more persons, to do an unlawful act, or, to do a lawful act in an unlawful manner or by unlawful means." And the requisites of the indictment are implied, by the definition of the offence; and in all reason, as well as all law, the indictment must conform thereto. It is not sufficient that the witnesses should prove a conspiracy — that conspiracy must be exhibited upon the face of the record. Nor is it alone sufficient that the indictment should be perfect; the facts must also be so — they must mutually impart and imbibe strength — reciprocally borrow and reflect light. The charge of one offence is not supported by proof [102] of another, any more than it is sustained by defective proof of the same. When the indictment is insufficient, it matters not what the facts may be; it may be demurred to, or taken advantage of upon the trial, or after the trial, upon a motion in arrest of judgment.

Overt acts may or may not be important according to the character of the charge; if the offence consist in unlawful means or manner, the overt act is generally necessary. At all events, the means and manner must be set forth. When the act alleged is clearly unlawful, unlawful means need not be stated; and if the act be not illegal, and no illegal means stated, there is no conspiracy. If this doctrine require support, it will be found in the City Hall Recorder, vol. 3, page 59.

Again – a conspiracy to do impossible acts, is not sustainable, unless when rendered culpable from the means contemplated. Hence an agreement to extinguish the stars – to blow up the moon – to swallow the ocean, to darken the sun, or to do any other impossible thing, unless the means to be used are illegal, is a subject for a commission of lunacy to decide upon, and not a criminal court.

Further – a confederacy is not necessarily criminal. A conspiracy to maintain the laws – to resist oppression – to protect rights, though that protection may interfere with the views of thousands – to discharge our duty to this world and the next, is neither illegal in the act contemplated, nor, in the present case, in the means adopted.

All this even by the common law – but let us recross the Atlantic, and come nearer home – The common law upon this subject must be received here with great caution, with abundant allowance, and so modified as to be adapted to the principles and policy of our government – It is part, and in criminal cases, the worst and most barbarous part of our inheritance from our parent stock. In Great Britain it is a necessary engine of power – It is essential to check and subdue their mechanics – their manufacturers – their artizans, other-

wise every man would swell himself beyond his assigned limits – the law in its administration is somewhat swerved to their purpose – “to do great good they do a little harm,” and too often build up [103] the throne of the monarch upon the bleeding hearts of his subjects. Upon the contrary, no such restraint is required by us – here, every man is a monarch legitimately crowned by the laws under which he lives – Here, people of the classes referred to, are rather to be encouraged and sustained than depressed. They are of the utmost importance to the character and wealth of the State – of the United States. But what says Judge Gibson? The authority referred to upon this subject by our opponents, is exactly what we contend for.

If therefore, I say, this portion of the common law is to be engrafted upon the law of this land, it must be modified and regulated to the policy of the laws of this land, and then it may be adopted. And when adapted to the character of the people here, it may then be said to be equally cogent, here as there. That reason, which operates without regard to difference of circumstances and situations becomes madness.

Why, may it please your honours, conspiracy, as considered in England, is scarcely less grievous than impressment, and neither has any thing to plead but necessity and expediency – neither reason nor justice will sustain them. But if, as I have said, this doctrine were to be extended to this country in all its force, and with all its majesty and might, the defendants could not be convicted, plainly for the reasons suggested by my learned friend, the opposite counsel, who has quoted Judge Gibson’s opinion, from the *Journal of Jurisprudence*.

The gentleman has turned to the 226 page; and that is the page to which I will call your attention. . .



[Here follows a quotation from Judge Gibson's opinion. See full report in Brightley's *Nisi Prius Cases*, page 36.]

[106]. . . Now I will change the sides of the question, and if I do not convict Robb & Winebrener, then the defendants deserve to be convicted. And we will furnish ourselves with arms and ammunition out of the enemy's own camp – the very means which our enemies had themselves provided.

Well, but, says the gentleman, certainly if you will not allow us any thing from Judge Gibson's opinion, you will not deny us in the Pittsburg case. But I will deny it, for that case and ours are the very antipodes of each other. They were journeymen to be sure, but they might have been readily mistaken for the masters in the present case.

I say Robb & Winebrener were the men indicted there – virtually the men, not the men in name nor quality; but in point of principle they were the same. And to show that it was the case of Robb & Winebrener, I refer to the indictment. The Pittsburg indictment may have been copied by our friend, but it does not follow that they copied the Pittsburg facts, for after setting forth the names of some score of individuals, it proceeds.

[Here follows a quotation in substance from pages 19-23 of the indictment in "Commonwealth v. Morrow."]

[107] But, the gentlemen are so led away with the idea of a society, that, finding societies in both cases, they took it for granted the offence must be the same. I think in the course of the proof it was made to appear, that they had changed the price of making boots, from \$1.75 to \$3.50, thus raising the price and departing

from the old bill. Now will any man tell me that journeymen entering into an agreement to do that which they were legally bound to do, will meet a case of this character. Robb & Winebrener occupy the place of these men who refused to do the work unless upon payment of higher wages.

They insist on cutting these men into mincemeat – they insist on crushing them with the hard hand of vexatious need. They had conformed to this agreement, they had ratified it by their practice; and now they think proper to depart from it, and to indict these men for not submitting to their imposition. Suppose they had reduced to six cents their daily wages; these individuals, I suppose, must either submit, or starve, or be prosecuted – they would have said, this or nothing – If you demand seven dollars, we will pay you seven dollars, but the penalty of poverty shall be your portion – we will advertise you, and all master tailors shall close their doors against you. The law should be more severe with masters than with men, and that in proportion to the means of individuals to encroach upon its sacred limits. The masters are more dangerous than the men, as well observed [108] by my respectable colleague; for although it does not bear directly upon this case, it bears upon the opposite party, and is therefore perfectly apposite.

There is no resisting the groans of a wife and the cries of her infants – this is a law which nature has inscribed on our hearts, and which it is neither in our inclination nor ability to resist; yet the counsel for the Commonwealth has ventured to appeal to your feeling. The plaintiffs are the offenders – they have conspired to reduce the wages, and nothing saves them from punishment but the want of an indictment.

I was about to observe that combinations of this sort are more dangerous in masters than in men, because poverty is a law which man can not resist. Masters have the means, and though they may exact from their customers any price which they please, there is never a thought of their being conspirators; while they are grinding down the men whom they employ, to little more than nothing, and pocketing their services. They can hold out, they can persist in their determinations, for they have already accumulated a sufficiency to confirm them in their obduracy. And again, the effects are more pernicious because they are more generally felt; for one master may perhaps, have twenty journeymen. The suggestion of this can not be too much dwelt upon, for even journeymen will some day become masters, or they look to become so, for "hope bears us through, nor quits us at the last." Every journeyman expects to become a master – it is the regular line of preferment; but few masters expect again to become journeymen. The journeymen therefore having a view to their subsequent elevation, are less dangerous in their opposition to the laws – they take care not to affect their character. But when the masters form a combination, they have no regard to the situation of their journeymen, because they never expect to share with them in their perils, nor pains; nor can they sympathize with them in their liability to evil, or susceptibility of good. . . .

[109] . . . Again, we are turned to another indictment in a sister state – we must be assailed somewhere, and if Pittsburg wont reach us, New York must. But let us see the indictment; what do the counts set forth? These resemble strongly the Pittsburg case, but ours not at all.

[Here follows a quotation in substance from the first four counts of the indictment in *People v. Melvin, et al.*, vol. iii, 252-254.]

[110] Thus, without a single observation, you perceive that the charge there and here are of an opposite character.

Having inquired into the nature of this offence, the general principles of law bearing upon it, and the particular character of the charge against the defendants, let us next inquire,

What are the facts of this case – in other words, how is this volume sustained by the evidence? For after all, this is the most important branch of the cause. “To this complexion we must come at last.” Upon casting the eye here, placing the indictment out of sight, and forgetting who are said to have committed the offence, honest nature at once asks, who are the alleged conspirators, the master, or the men? Let us in answering this inquiry, look to the origin of the transaction, the more immediate origin. Is this prosecution founded in the pursuit of justice, or in the gratification of avarice and revenge – two of the meanest, as well as the worst passions that agitate the human breast. Why is it that Mr. Winebrener is thus clad in the panoply of the law, and mounted upon the broad shoulders of the Commonwealth; is it to spy into abuses that have been practised upon the state, or is it to convert the thunders of the law to his own selfish purpose? – I say it is the latter. He commits an outrage upon Mr. Boner, one of the defendants, upon a mere cock and bull story of the naval hero Mr. Chamberlain, who permits no opportunity to escape, from the beginning to the conclusion of this case, of exhibiting his fidelity, at the expense of his courage. Mr. Winebrener is the first offender, and



is bound over: then, and for the first time, as his counsel admit, he thinks of binding over the defendants; he first charges six, next twelve, and increase of appetite still growing by what it fed on, he finally charges twenty-five. After this, although it certainly can not be said of him as was said of Paul, that too much learning has made him mad – undoubtedly we can not but perceive that too much malice has.

Having swayed dominion over his own shop, he enlarges it to his pavement – then extends it to all Chestnut Street, and not satisfied with this, carries his authority to assail and beat these men wherever they may be found – holds them all in subjugation, and emphatically, at last becomes the self-created “Lord of the Bright City.” Chamberlain is confederated [III] with him, as well as his partner, in this assumption of authority – in this oppression of the defendants – in this violation of the laws; and still we are told that they are no conspirators, but that the offence should be charged only to these unfortunate men – men who, for aught that appears, are much more “sinned against than sinning.”

Let us for a moment, while upon this part of the case, turn our attention to the particulars of the affair with Mr. Boner. Induced as I have said by Chamberlain, he approaches Mr. Boner, and tells him he had better go about his business – why do you volunteer your advice, Mr. Winebrener – is not Mr. Boner pursuing his course home – is he not engaged in his own business? Certainly. Has he interfered with you or yours? No. He is a poor man, it is true – and you have wealth – he is a cripple, and you have not only strength, but you are supported by Mr. Chamberlain, who has the Ne-mæan Lion’s nerve – but still you have no right to

trample upon legal privileges – nor personal sanctity. Mr. Boner replies, you are not to dictate to me; I am on my road home, but I'll walk where I please. Upon this Mr. Winebrener shoves him, Boner raises his stick, which he carried for his support, being lame, merely as a defence, upon which Winebrener knocks the stick out of his hand, and as an additional proof of magnanimity strikes him over the head. Well was it that night had spread her dark mantle over the blushing deed. Not contented with this outrage – which, remember, he relates himself – he adds injury to injury, by preferring a complaint, against the man he had assaulted some days after, before one of the neighbouring justices of the peace, for the praiseworthy purpose, no doubt, being under the direction of counsel, of counter-acting the testimony, which otherwise must overwhelm him. Binding over of Boner bears strongly upon other parts of this case – it indicates the disposition of the prosecution – it shows an activity and vigilance of spirit equal to any emergency that may be encountered. The disposition and ruling passion of men being once ascertained, it serves as a key to unlock all the intricacies, and unfold all the mysteries of the human heart. The cruelty practised upon Mr. Boner, is in accordance with the prosecutor's deportment toward the other defendants. Having dismissed them from his employment, and [112] taken measures (I mean no pun) to prevent their being employed elsewhere, he is offended that they should convene together in the vicinity of his shop. "I have shut you out of my house, and out of every other house by my influence – and now the wonder is that you should be found together in the street – most reasonable surprise truly! As well might every unfortunate individual, who is a disbanded officer, be

indicted for high treason against the country for which he bled, because the United States may have left him nothing to do, or to hope for, but to congregate with his former associates in arms, in endless idleness, and sympathetic misery. But further – these men are not even permitted to assemble in the region of the post office – not even upon the Rialto. One is supposed to have a private pique against Mr. Chamberlain, and is not allowed to speak to him. They are not allowed to communicate their own grievances to an individual to whom Winebrener had communicated his. He can go to Mr. O’Neil and relate the story, but these men may not. That is the simple explanation of this great matter, they have character, and they depend on it for employment, and when Robb & Winebrener had been to stigmatize them with O’Neil, they thought proper to vindicate themselves. But more than this – he will not let them stand, or walk, or speak, without his leave, but he will speak himself, and boldly too! He comes to the door when Radford is walking peaceably by, and commences an attack upon him, and I wonder that in your attendance here, passing by the residence of this gentleman, you had not been assailed and indicted also. It was a public street and Radford had a right to be there; but this gentleman was not satisfied with restricting them; he claims a privilege which he denies to them. He comes up to Radford, and tauntingly asks him, “A’n’t you tired of standing guard, won’t you have a chair?” Now this is frivolous, and it deserves punishment. But it is said, by way of enfeebling the evidence, to which I have referred, that the witnesses for the defence are all journeymen tailors except some three or four; and we are told that, although they are not journeymen tailors, they are master tailors, and are sup-

ported by journeymen tailors and apprentices. I ask you to notice the shop of Messrs. Robb & Winebrener – this [113] northern hive – this *officina gentium* – that pours forth this host of witnesses. If you take the testimony of those who stand in close relation to the prosecutors, out of this case, it has not a foot to rest on. Mr. Winebrener is the first, the former prosecutor and aggressor. Mr. Chamberlain, the Messrs. Robb, Charles, Samuel and William, the one a partner and the other his brothers – O'Neil, who is employed and gets the work intended for these men – Ramsay the runner – and he follows so close after his master that he brings before you, as Mr. Winebrener did, a memorandum, and asks you to affix your seal to his Scroll of Fate. Then you have the most important witnesses in this case, every one, I was about to say, from the self same shop-board – nay, every witness, I might almost say, is a party to this very cause.

For all the purposes of testimony the defendants are dead; their lips are as effectually closed, as though the ponderous and marble jaws of the tomb had devoured them; and nothing is to be heard but Robb and Winebrener, nothing seen but that bright Galaxy in which they, the primary planets, are surrounded by a host of twinkling satellites. All this is matter of consideration; the inconsistencies of the prosecution are to be more rigidly scrutinized, their dispositions more closely examined, inasmuch as they have an unlimited power of doing wrong, and their antagonists are debarred of all opportunity of counteracting that wrong. But the prosecutors have not only sealed our lips, but they at the same time complain of our want of witnesses. They say we should have produced Mr. Alderman Barker – for what? To establish what had already been abund-



antly confirmed by at least three or four witnesses. Was not the transcript of Mr. Barker offered by us and opposed by them? If they did not like the act, it is not probable the man would have met a better reception; or if he were desirable, why did not they produce him? If he could gainsay the defendants' proof, they had but to step across the street, requiring no seven league boots, to secure his attendance. But while upon the subject of evidence omitted, allow me to inquire from our friend, who conducts this charge? Where is Mr. Ross, who applied to the Messrs. Watson for the price of the riding habit? Mr. Winebrener's [114] statement unquestionably required his support; he is among the missing. Where is Mr. Burden? a gentleman of undoubted character, and who could at once have placed the impress of unequivocal truth upon those transactions, in regard to which, we have at present nothing but the scrambling, scattering, and unsure observance, of the redoubtable naval hero, Mr. Chamberlain. Mr. Chamberlain! whose sight is so jaundiced either by fear or favour, that the most common and familiar courtesies, are subject to be misunderstood by him; shaking hands itself, with him, is a badge of deliberate treason; there is not a smile but lurks a devil in it; and in short, all the charities, and sympathies, and civilities of life, are dark denotements of the most deadly and destructive hostility. So fertile, so fruitful, is his imagination, that with a single effort of his fancy, he converts at once a pair of humble, unaspiring pantaloons, to a purpose scarcely inferior to that of the imperial robes of the immortal Cæsar. . . .

[Here follows a lengthy ridicule of Mr. Chamberlain and his testimony.]

[116] But to his story – having escaped the murder-

ous weapon of Mr. Parkinson, he takes shelter under the friendly roof of Mr. Burden; while here, he sees, or fancies he sees, enemies upon all sides; three men nearly opposite to the door – and several others approaching – Falstaff's men in Kendal Green, I suspect – buckram men, certainly, even according to his own statement. To relieve him from this state of incalculable peril, the magistrate and Mr. Milliman who had been sent for, at length arrived; and under the charge of the latter he is induced to resume his way home – and what is remarkable, none of these beleaguering enemies, according to Mr. Milliman, molest, speak to, or apparently notice them. When they reach the vicinity of South street, Mr. Winebrenner arrives in breathless anxiety – calls to the constable, and then, instead of passing on to the residence of Mr. Chamberlain, which was within a short distance, wonderful to relate, and the more remarkable, as it is entirely forgotten by the hero of this episode – at the instance of Mr. Winebrenner, they all three retrace their steps – encounter Mr. Boner and Mr. Donahue in their return, which results in the unprovoked assault and battery upon Mr. Boner, to which I have already adverted. Mr. Milliman, a perfectly respectable, as well as disinterested man, acquits the individuals accused by Mr. Winebrenner and Mr. Chamberlain, of every thing like impropriety, and conclusively shows that this most horrible and appalling scene of outrage, and probable murder, was but the sheer courage of an overheated brain – In short, this man appears to have been wrought up by some internal and unaccountable agitation, almost to a [117] pitch of madness – or at least, he centres in his make such strange extremes, as to render his conduct perfectly inexplicable upon the common principles of human

action – he first flees from danger, either real or imaginary, with little or no apparent cause, and then with no more cause he voluntarily confronts that danger. He sees a man at eleven o'clock at night moving about his door, and is terrified at the treacherous designs of which he suspects him, and yet leaves his house for the purpose of pursuing the enemy and subjecting himself to the very crisis that he dreaded.

This shows the spirit of the cause, and it is for that purpose mainly, that I have taken the liberty of occupying your attention with these transactions. And is it at all extraordinary that thus situated, the opposite counsel should attempt making a virtue of necessity, by professing a disinclination to comment upon the character of the proof, when the proof which they have exhibited, for the most part shrinks from the test of comment – Their profession is too thin a veil to conceal the true character of their liberality – it resembles the kiss of Judas the betrayer – the compassion of the crocodile, who mingles his tears with the life's blood of his expiring victim. If men are to be assailed, let it be done openly, with full opportunity of resistance. Why is it, notwithstanding all this mercy – this theoretical mercy, the prosecution is still too cruel, even to some of their own witnesses, – Saturn like, devouring their own offspring. In regard to O'Flaherty, who was called by them, it is plainly intimated, without any inducement being suggested, that he is perjured – nay, more – that by way of protecting himself in that perjury, he had torn a leaf out of the minute book of the society. Notwithstanding the witness, with a promptness and frankness that did him honour, gave for explanation, that this book had originally been appropriated to other purposes, and that, as he did not slumber amidst hoards

of gold, and had no money to lavish upon unnecessary purchases, he converted the book to the uses of the society, having previously torn out the leaves which appertained to other matter. From the severity, with which Mr. O'Flaherty has been treated, we may easily perceive that, whether friends or foes, if the individuals who have been invoked [118] into this trial, stand in the way of Robb & Winebrener, they are equally liable to prostration. . . .

[Comments upon the inconsistency of the testimony of Mr. O'Neil and Mr. Ramsay are omitted.]

[119] . . . But there are still greater discrepancies. Winebrener, O'Neil and Ramsay, with the benefit of their memoranda to boot, tell you that there was never any instruction to the alderman to discontinue the prosecution against a number of these men, but that it was determined to pursue it. Notwithstanding the opposite counsel gave you to understand that the defendants were merely on their good behaviour, and to be discharged or tossed in a blanket, as the whim, will, or pleasure of the prosecution might suggest. Four witnesses for the defendants state, that three of them were actually discharged at Mr. Winebrener's own request, and we have offered the records [120] and the returns of Mr. Barker for the purpose of confirmation. The same witnesses swore that a commitment had been prepared for Bates, Skeegs, and Scott, and that it was only upon their counsel declaring that they would not give bail, but should submit to imprisonment, and that a suit should subsequently be instituted against Robb & Winebrener for a malicious prosecution – that, from a fear of punishment, and not a love of justice, the case against these gentlemen was dismissed, on simply their own recognisance. Notwithstanding this, they, and some



dozen others, for the purpose of depriving us of testimony, and transferring the responsibility of this prosecution to the shoulders of the Grand Jury, are subsequently embraced in the indictment. If this shows nothing else, it at least betrays a conscious fear on the part of our antagonist, and discloses the state of mind by which they have been, and still continue to be influenced in this proceeding. There has also been the most unnatural obliquity, not to say perversion of intellect and vision, that ever crept into a cause. It would appear as if every one of these gentlemen had, like Foy, employed a telescope, with this difference, to be sure, that it was so inverted by them, that every thing appeared erroneously, and the world was turned topsy turvy. Mr. Robb tells you, and his testimony and deportment are entitled to much greater respect than some others, that one of the individuals not now upon trial, taking the name of the Deity in vain, swore he would enter into the shop in despite of Robb, whereas the very individual referred to, upon his examination, says, that the language imputed to him was used only by Mr. Robb, who accompanied his profanity by leveling a lapboard at the head of the witness, and pursuing him down stairs with threats, although he had previously offered willingly and peaceably to leave the premises. This man has no interest in the present controversy, and he is strengthened by being opposed only to those who have.

Last, though not least, comes Mayhew. How does he stand? He was formerly in the employment of Robb & Winebrener, and now under the promise of future employment from them. Heaven forbid – though I am not in the habit of invoking any thing sacred in a cause like this – I say heaven forbid, [121]

that, because he has been in their employment, he should be thereby biased, or swerved from the truth. While we condemn the suspicions of others, let us not fall into the same error; but will you turn your attention to him and examine his claims to belief. He is one of those who suppose that somebody always wants to buy them; and for the very reason that they are always willing to be bought. He supposes that these journeymen wished to purchase him, and he says they endeavoured to dissuade him from going to Robb & Winebrener's. Now what is the plain testimony of those who are not journeymen tailors? What say they? Why that they endeavoured to dissuade this headstrong young man from getting himself into difficulty, and adding the twenty-sixth man to this conspiracy, but never dissuaded him from going to Robb & Winebrener's. But what is very strange is, that he throws up his work, not from any dissuasion of others, but from some domestic broil; and still it is imputed to these men.

It seems there was some unhappy family disturbance, and that disturbance was pursued by our friend, under the hope that it might be traced to the defendants; but it turned out to be purely a domestic disturbance, and was subsequently avoided by me, as indelicate and improper. He states, when put to the torture, that in consequence of this difference, he turned Pickering from his house. Pickering says he never saw him there, that he never was in his house but once, and then he called to mention that he had some work for him. He mentioned it to his wife, Mayhew not being at home, and the next day the man came down to the shop. Do you suppose, if it were true, that he expelled him as he has said, that he would come down to Pickering's shop and

ask his advice? Does not this fact show, as well as the evidence of Miller, that all this story about his wife and Mr. Pickering, which nobody can understand, was merely resorted to, to extricate him from a difficulty which he could not otherwise escape; and that it had as little foundation as three-fourths of the other statements from the same quarter. Mr. Mayhew is next seen at Mr. M'Guire's, where the society met. Here he saw some of the defendants – converses with them – tells them he is willing to be idle if he can get money enough to support him – [122] never receives any money, and finally, finding no other bidders for his services than his old employers, he communicates all, and more to them, and again enlists under their banner. It would be safer to rely upon the fidelity of the winds and the waves, than upon testimony so loose and unsatisfactory as this.

As to the charges, or rather reasons, why these men should be considered conspirators. First, because they belong to a society which has adopted illegal laws. It is not so charged in the indictment – that is my answer. All the time that is employed in discussing the affairs of this society amounts to nothing. You discuss the laws of the society as if the society had been indicted; and, as if the crime consisted in confederating and forming these laws. But that is not charged. It is attempting to argue that there was a conspiracy, which can amount to nothing unless embraced in the indictment. For you can no more punish a crime without an indictment, than you can punish upon an indictment without a crime. But allow me to rescue the society, though I have no interest therein but that which every man should have, from unmerited reproach.

We are told by the gentleman on the opposite side, in relation to the book of this society, that he did not

take it home, because he supposed that he should be suspected of taking out the leaves. He might have taken it home, I assure him, without any such suspicion – nay, we should have rejoiced in it; for had he known more of its principles, he would have condemned them less.

If, may it please your honours, this society had been indicted, the cause could not have been sustained – undoubtedly, then, the society not having been indicted, the cause can not be sustained, at least, so far as relates to the proof bearing upon the society alone. There is not an illegal principle in the whole book. The first, however, adverted to, and that which gives a more dreadful note of treason than the rest, is an enactment, that any individual who shall move to convert this society into a beneficial society, shall be fined for the first offence, and expelled for the second. I have not much knowledge of this subject, but I presume that most of you have belonged [123] to societies of a similar kind. And every man knows perfectly well, that this portentous and ominous rule amounts to nothing – nothing at least in support of the gentleman's apprehensions. Now what in this is the evident object? Here are men who have associated together for the protection of their rights. And ever since the allegory of the bundle of sticks, it has almost been reduced to a proverb, that the weak should combine for protection against the strong. They have done it, and they are bound together by a silver cord, securing the object for which they have united. Now that provision is to prevent lawless individuals from coming into the society in large numbers, and turning the public coffers to their own benefit, in contravention of the design which formed the basis of the institution.



Have you not been told that it is a beneficial society, that they bury their own dead, that they pay the expenses of the funeral? And are not those benefits lasting which survive the grave? Nay, is not one of the charges, that it is a beneficial society, virtually? I trust the gentleman will excuse me for saying, that he has been blowing hot and cold with the same breath; first, it is a beneficial society, and therefore to be repudiated, and the next instant to be condemned because it is not a beneficial society. How shall we steer, to catch a favourable breeze? How shall we at the same time shun Sylla and Charybdis? Let him take it as if it were not a beneficial society, armed with lawful objects; but if it be a beneficial society let it never be said, that the benevolence or beneficence of its character should take from its legality. But we are next exultingly turned to the 14th Article, as the respectable counsel supposes it is miching mallecho, it means mischief; but neither he nor any one can tell how. At the time when journeymen are standing out for their rights, and at the oppression of overweening masters, or opposing despotism and force, if any man desert his brother – if he desert him in a struggle like this, he is a coward, and a traitor, and he deserves no better name, and the law discountenances – the law says that men shall stand out for their rights – and it is only when they stand out for their rights against the encroachment of others, that they are vindicated or sustained, and I am willing to read [124] it to you an hundred times if you please, as the best encomium that can be pronounced upon a body of men so grossly abused – so miserably misunderstood.

“Article 14. Any man going to work at the time of a turn out, and at a time when young men are stand-

ing out for their rights in this city, or any of the principal towns in the United States, if it shall come to the knowledge of this society, the parties so offending shall pay a fine of five dollars; and after paying the same, if any member shall upbraid him with his former conduct, he shall pay the sum of one dollar."

Observe the justice of the law – Solon himself could not have framed a wiser law. And after paying the money, if any man should upbraid him, that man should pay a fine of one dollar. You have erred and returned again, like the prodigal to your duty – you have erred, and we, who are all liable to err, forgive you; "to err is human, to forgive is divine."

But nothing being found in the book, the gentleman resorts to his fancy, to an imagination of what might be: and you are to convict upon a prospective or possible evil. Although it is not contained in the book, yet how do we know, that they have not made provision for it by a shop rule? We offered to tell them what were the shop rules; but having shut their eyes to the light, they should not now complain of darkness. We have offered to show them that it was not a shop rule – they refused; and we are bound to believe the truth of the case is against the surmise. You have heard many instances where journeymen, individuals, not members of the society, have not been disturbed, and you have had no instance in which they have. There may, it is true, be the "pitcher law," governing their little convivialities; but they do not drink treason on the admission of every new member; and they are not to be convicted on mere hints and inuendos – we ask for stubborn and unequivocal facts. I say the witnesses, or some of them, have clearly established that there was no illegal confederacy at all. But what is the answer, again? when at

every corner of the case we are assailed, we are there armed in the law? We answer, you have not charged us with the pitcher law. We have spoken to that law, not that from any interpretation we can be affected by it, but to [125] show that we ask no quarters; but are ever ready to encounter the alleged charges, whether suggested by the record or imagination. We come prepared to meet you, armed nevertheless against the offences of which you have accused us; but we do not refuse to meet any thing and every thing – although it would be illegal, and unjust to expect it. So much then for the society – we will now throw out of the question that which does not belong to it, and for which our opponents must be our apology, if it has constituted the burthen of our song.

What then is the first charge in the indictment, and the facts relating to that charge? We will endeavour not again to refer to that which is not essential to this case; although it was necessary that this should be remarked upon, lest the jury should suppose the subject unanswered, because unanswerable. I only ask you to exercise your own reason, and I will be perfectly content to leave the cause to its unbiased results. But do not understand that in being somewhat unwilling to extend your time and protract this case, it is with any other disposition than to abridge your labours, that I have omitted to answer some of these arguments, but rather impute it to its true source, a proper regard to you, and a perfect conviction that they are answerable in your own unassisted minds.

What then are the first four charges? They are charges of conspiracy on the part of these men, to do an unlawful act, or to do a lawful act by unlawful means; and I care not which. The act alleged to be in

contemplation by the conspirators, was the increase of their wages beyond the usual price of wages, and not accepting the usual price of wages which Robb & Winebrener, and others had been accustomed to pay. These are the first four charges. I allege that the prosecution can not succeed on the establishment of a doubtful case – they can not succeed by rendering it difficult to decide, whether the defendants did in fact exact more wages, or whether Robb & Winebrener offered less. They must show clearly – the burthen of proof being with them, that we demanded more than the usual wages. It is not incumbent on us to show that they wished to pay less; but we intend to show that these men [126] are the sufferers, though not the complainants. Instead of their demanding more wages, Mr. Winebrener, himself, introduced the attempt to reduce the wages below their proper legitimate level – (turns to bill).

Is this your bill, Mr. Winebrener? Yes. Is this your bill, Mr. Robb? Yes. Is this your bill, Mr. Watson? Yes. Well, is it the bill by which you work, or by which journeymen work for you – and does it govern the prices in this respect? It does. This being the bill, and placed in Mr. Winebrener's book, and displayed publicly in the shop of the journeymen – now how did it become the bill? By express contract and agreement between the parties. And strange as it may seem, this is an indictment of men for endeavouring to keep their contract. You may have been led away and bewildered by the learned counsel, and they may hope to succeed by the mystery in which the subject is involved. But stripped of all its borrowed plumage, it is an indictment against twenty-five men for wishing to keep their contract, against, I do not know how many, for desiring



to break it. This being the bill, we have nearly arrived at the conclusion of our labours, and allow me to congratulate you upon the subject. What was the work done? It was a pongee riding dress, requiring five or six men to complete it, as it was wanted almost immediately, and to be finished in a particular way. Well, what were the appendages and what were the extras? In the first place, it was a dress with hussar skirts – in the second place, it was stuffed in the breast – it had wadding in the heads of the sleeves, and vents at the wrists. It had hussar skirts rantered at the body – flies at the breast; and all this in conformity with the bill is charged at seven dollars. It is said that there were no extras, but every man examined has proved that there were extras; thus making the prosecution the worse, by giving them a bad habit in story telling, as well as in other matters of their vocation. I put it to the jury, and ask if they know any exception, besides that of Mr. Winebrener. The other witnesses all stated that there were extras. But the gentlemen seemed to have abandoned the extras, while relying on the difference in price. With the extras the job amounted to seven dollars six and a quarter cents, and what did the journey-men [127] demand? Did they demand eight dollars or ten dollars? No such thing, though they might have demanded something above the usual price, they demanded exactly seven dollars. And what did the masters offer to pay. One dollar less than the regular price – they insist on departing from the regular and usual price; and turn round and indict these men because they are not willing to submit to the imposition. Corrupt motives are not to be causelessly assigned; the defendants are supposed to act purely, particularly as there is sufficient reason here to induce us to believe

they were right. The price is authorized by the bill. Were there any distinction designed, it is not introduced; and when it is not introduced, you are to take analogy for the guide. They might as well say their making a blue cloth habit should be but six dollars, because there is a difference in colours. The question is whether the work was done and intended to be paid for. Thin coats, coatees, and jackets, are distinguished in price from thick ones, because there are no more seams in the one than the other; because there is no difference in the seams, and no wadding, as the object of the dress is to prevent being overheated. The wadding is excluded, and they are made in the most simple and airy style. What is the analogy? It is marked in one case, and in other the absence of the mark shows that no distinction is to be made.

Now, in the first instance, how is it with a pongee habit? is it as with a thin coat? Not at all. There is in the first place a very evident distinction. But I mean in point of fact, not in principle – the one is intended for a lady, and the other for a gentleman – But that is not very important. In the next place, it is made of stuff half a yard wide, and contains more seams – the one having five, the other two or three; but it is not necessary for me to go into an actual observation, for when I tell you all, I can say no more than the witnesses have expressly sworn to.

The man who has been stigmatized with being a gardener and sexton (I am wrong,) a clerk of St. Stephens. I beg pardon, your honours, not being so well versed in church history as the opposite counsel. The clerk (it shall be) of St. Stephens would rather make two cloth habits than one pongee independently [128] of the price or profit – he would rather make

two cloth than one pongee. And did they not all say that it was as much or more work? But it is said perhaps from the charge in Mr. Watson's book, a most respectable gentleman, whom no man will disparage or accuse of improper participation in this matter, that on one occasion Mr. Watson had paid but six dollars.

[The court adjourned till half past 3 o'clock.]

Court met at half past three, and Mr. Brown resumed as follows.

With deference to your Honours. At the time of the adjournment I was about closing my remarks, and of course I have but a moment to claim the extension of your indulgence.

The subject under discussion at that time was the price charged by these journeymen for their work. And we contended, and I hope satisfactorily, that this was the only matter embraced in the first four counts of the indictment. The unlawful act with which these men are charged is their having combined to enforce the payment of prices beyond the usual and established wages. I had proceeded so far as to invite the attention of the jury to the testimony introduced on the part of the defendants, and that part of Mr. Watson's testimony, said to be sustained by the book of original entries, whereby it appears according to his own declaration, standing aloof as he does from this case, and if possessed of any thing like sympathy, certainly that sympathy is naturally with the prosecution, that the amount paid by him for a bombazet riding dress for a lady, was \$6, which is the precise sum charged by the defendants, independently of the extras. The difference between four dollars fifty cents, and six dollars, one third, would scarcely have been paid by Messrs. Watsons, liberal as they are, if not sanctioned by the bill.

We are told, however, there should be a difference – they supposed there should, as between summer and winter clothing! But I [129] say there should not, because the bill precludes the idea<sup>2</sup> – the bill makes a distinction expressly, in cases of men's attire, and not doing so in relation to women's attire, shows that such a distinction never was intended. Six dollars, Mr. Watson has told you, was paid by him for making a riding habit which had flies in the breast – here, say the gentlemen, is an extra not charged. Grant your attention to one small circumstance – I desire you to bear in mind, that one of Mr. Watson's journeymen was examined but a moment before he (Mr. W.) was called. This journeyman states that the habit referred to, was made in his shop, and the only reason, there being flies in the breast, that they were not charged was, that not being very conversant with his rights, he omitted to charge the twenty five cents. Here is a thin habit then for which was paid six dollars, and the only reason that the journeyman did not receive six dollars twenty five cents, was, that he did not charge it, and still he received the price for making a thin habit, the same as if it had been a cassimere or broadcloth, without the extra, which he only failed to receive from omitting to mention. But it appears on the book according to the testimony of the gentleman, speaking of a remote period of time, that there is a charge also of six dollars seventy-five cents, for a thick riding dress, but he at the same time tells you, that since this bill became the law governing this establishment, he has no

<sup>2</sup>Ladies' Habits, Coats, and pelisses. Habits without skirts, plain, 4.50; with skirts, plain, 6.00; if loops or strings to tie up at bottom, extra .25; vent at sleeve hand, without buttons, extra, .12½; wadding in breast, extra, .25; Hussar skirts rantered to body, extra, .12½; each fly in breast, extra, .25. Habits, hussar fashion, without skirts, 6.00; with skirts, 7.50; wadded sleeve heads, extra, .18¾.



recollection of any other, and he does not recollect whether that contained extras or not. It is pretty clear that it did contain extras, or otherwise six dollars and seventy five cents could not have been made out. There must have been vents in the sleeves, [130] and hussar skirts, which were charged, and which were paid for. I claim no credit for this, it is perfectly evident from the bill itself, as compared with the book exhibited. He who runs may read.

Then here we have all that we contend for, ratified by practice. For if the prices of summer clothing generally were to govern in ladies' habits, Mr. Watson would have offered some four or five dollars for that, for which he paid six, and for which he might have paid six and a quarter, if there had been any attempt to claim it, but he paid what was on the face of the bill, without adverting to the extra. I apprehend the matter is perfectly clear. Nay, Messrs. Robb & Winebrener themselves finally paid the price as it was demanded: and here is another confirmation of the propriety of the charge. If they had thought it really an extortion, would they have paid it? They allowed their minds to cool, and paid the bill, but yet their malevolence remained unimpaired. This attempt was an indirect mode of saying, reduce your prices—we have offered you six instead of seven dollars, and we will by and by offer you five instead of six. And still they turn about in the face of all these facts, and tell you that the conspiracy was on the part of these men, and rely upon the master tailors to bolster them up—they invoke their interposition—they confederate actually, as well as constructively, to bring these men into subjection to their will, and for what? For the purpose of violating an express contract with these men, to

which they were mutually bound to adhere, and for departing from which the law would have punished them. I say that Robb & Winebrener are the men contemplated in the indictment to which the counsel have alluded – that they are the conspirators – and that they are not alone in the confederacy. The legal offence – the moral offence, if there be any, as suggested, is in the defendants raising their wages, and that not being well founded in fact, they can not be convicted, for the facts do not sustain the indictment. It may appear monstrous on paper and nothing on proof. And I shall insist on that with which I first set out, namely, that the indictment without facts, or facts without an indictment can claim nothing at your hands, but to [131] be considered, as specious, legal amusements and toys – “mere sound and fury, signifying nothing.”

What then remains, but a single charge, which has been exhibited in various ways, but the design, as alleged, is still the same – to injure Robb & Winebrener, and this, their thrice valiant champion – the peerless knight of the pantaloons – “No goose,” says the opposite counsel – no doubt, the bird of wisdom, an owl, I suppose; he certainly must have been blinded by the flash, when he mistook a pair of simple galligaskins for a pair of pistols – just twelve inches long – duelling size – hair-triggers, doubtless – percussion locks, and loaded to the muzzle. *O Horribile Dictu – O miserabile visu!*

But we design to embarrass and impoverish Robb & Winebrener, Chamberlain, O’Neil and a number of others – have they shown the design? for that is the gist of the charge. The defendants did assemble, it is true, at the corner of Third Street. This is offensive to the prosecutors but not to the laws of the land. Messrs. Robb & Winebrener dwell at such an immeasurable

distance above them in point of character, that they are not allowed to look at them even with a telescope – But notwithstanding this prohibition, we are told that some of them did undertake to look through Girard's bank with a telescope, into the back window of Robb & Winebrener's shop. But from their location, I should have supposed, that they would require a telescope that would enable them to look, not only through the marble walls, but through all the loaded coffers of Mr. Girard, – a fine prospect truly – and you are asked to enjoy it in fancy – believe it you can not. But why was that an offence? Did they halloo? Yes. They hallooed to Winbrener, and Winebrener hallooed to them. Is it the play of children, that is seriously employing intelligent men, invoking the interposition of the law, and sacrificing the time of hundreds – We are again told that they made noises that are not to be described; wonderful! but it is not for what can not be described, but what is described, that they are to answer. Did you hear them make a noise? Yes, they hallooed through the windows, and looked in with a spy-glass. Well, is looking through a spy-glass, and hallooing in a manner that can't be described, a conspiracy? Again – they stood at the corners: [132] they had a right to do so. It is said they intercepted the men, and told them that if they did not continue in the service of Robb & Winebrener, the society would support them. If they had a right to enact such laws they had a right to promulgate them: that they had such right, I trust we have shown.

I did not know that one half of the defendants were connected with the matter at all, by the proof, or connected with each other. They were shown to be members of the society, it is true, but not even shown to have

been on the pavement – it is necessary that they should be identified in this transaction. I protest against doing justice by wholesale, when the facts on which it must rest have been so miserably retailed from the beginning to the end. Well, but Mr. Radford is certainly to blame. This goes to all the counts, and with this I conclude. He ventured to pursue Mr. Ramsay or Mr. Chamberlain – I don't speak certainly, (the argument is the same.) Mr. Winebrener followed along Third street down Fourth street, and then turned up and then down; thus having a real wild goose chase in pursuit of Mr. Radford, while Radford was in pursuit of Chamberlain. But, what is the amount of this. They thus pass up one street and down another, and give their courses and distances, going and returning, all of which serves only to remind one, of Goldsmith's compliment to that honour and glory of her sex, Madam Blaze.

She was beloved, I do aver,  
By twenty Beaux or more;  
The King himself did follow her,  
That's when she walked before.

Wenebrener walked after Radford, and Radford after Ramsay – but he stopped at a watch box, or lamp, and that too is become a matter of conspiracy – if so, it must have shed more light than we have yet seen. Mr. Ramsay next encountered some half dozen opposite the Post-Office, and was asked where he had been – he said in answer, what was not true – I hope it was the first time – I am sure it was not the last. Here were Messrs. Robb & Winebrener sending clothes all over the city, and if Radford did follow, Winebrener followed [133] also – He must not impute the conse-



quences to us when he is the cause. I don't pretend that one conspiracy justifies another, but what I say is, that there is no conspiracy but in the prosecution itself, and that the means of resistance adopted were necessary, and sanctioned by the opinion of the Judge referred to by the opposite counsel upon the principle of self-protection. . .

SPEECH OF MR. J. R. INGERSOLL

[135] So large a portion of time has been devoted to the exhibition of ornament and the play of fancy, that I shall not only escape censure, but merit something more than negative commendation, by adhering to the mere business of the cause. . .

[Comments upon the address of opposing Counsel and the tactics of the defence are omitted.]

[137] We shall find in the charge of Mr. Recorder Levy, in the case of the journeymen shoemakers, an expression of sentiment so applicable to this part of our case, that I will lay it before the court as an answer to the suggestion which has been made, and a guide for all of us who have yet to perform a part in the cause. . .

[See vol. iii, 225-226, for the quotation.]

[138] Offences of this description have been so often the subject of judicial inquiry, that they are no longer attended with embarrassment to the court. But still an advocate is able to excite an undefined and mysterious dread with regard to them in the minds of jurymen. Conspiracies, it is true, owe their existence, as subjects of penalty, to the artificial rules imposed by the exigencies of society. But in this they merely resemble other crimes; and were this a reason for exempting them from punishment, the catalogue would be reduced so as to embrace merely those offences which concern personal injury and protection. Treason could

not exist, for there is no government to betray, except as it is established by superadditions to natural law. Robbery, with all its varieties and modifications, would be blotted from the code, as it grows entirely out of the rights of property. Forgery could not be perpetrated without a genuine circulating medium – the creature of commerce; to be imitated. Even perjury – the most dangerous of crimes – would go unpunished; because where there are no laws to be enforced, there are no judicial sanctions to be violated; and conspiracy for like reasons would pass unnoticed, since there are no associations to do good or evil, except as they depend upon the organizations of society. But as the relations of civil government are formed for the benefit of united strength and resources when applied to good purposes, and directed by well disciplined minds; they are exposed to peculiar danger from united strength and resources, when applied to evil purposes and directed by minds of an opposite character. Hence the maxim *non est crimen voluntas* [139] *sine perpetratione*, in strictness is true only when used with regard to single individuals. Where several are combined together, the mere intention to do wrong, if sufficiently manifested by words or actions, is punishable. The reason for the difference is obvious. The lurking and undeveloped thoughts of individual wickedness, are the unavoidable results of the natural depravity of the human heart. But they are as harmless as they are uncontrollable: and neither the waking vision, nor the sleeping dream is responsible to human authority. But combined intention is inseparable from action. The very comparison of wicked thoughts is voluntary conduct. Its incipient stage is the beginning of crime, and if not noticed while yet immature, it will expand into per-

petration which is beyond the reach of prevention, and often, even of remedy. The relative strength of a single person to that of a number, is not exactly proportioned to the positive difference between one and many. Combination itself gives momentum to mere force, and the energies and capacities of a union of individuals, is infinitely greater than the aggregate power of each.

Establishing these principles, it is difficult to anticipate all the cases that may occur, or to limit by definition the extent of legal superintendence and punishment. "A combination," says Judge Gibson, in the *Commonwealth vs. Carlisle*, "is criminal wherever the act to be done, has a necessary tendency to prejudice the public, or to oppress individuals by unjustly subjecting them to the power of the confederates, and giving effect to the purposes of the latter, whether of extortion or mischief." "All confederacies whatever, wrongfully to prejudice a third person, are highly criminal." 3 Wils. *Lectures* 118. But why search for definitions among the books, when the candour of the counsel has furnished one at least as comprehensive as any that they afford? "A conspiracy," he is willing to admit, "is an agreement to do an unlawful act, or a lawful act by unlawful means." There can be no difficulty in bringing within the scope of this definition, the undoubted and undenied proceedings of the defendants. The New York case, is cited and relied on by us, not to show the peculiar impropriety of conspiring to raise wages, but to establish general principles, from which, as conceded there, it [140] was inferred that a conspiracy to raise wages is criminal. The difficulty, there, here, and at Pittsburgh, has been, to procure a conviction for that specific offence. Prejudices were invoked against an interference with what, as regards individuals, appears to

be so plain a right. All the general principles, directly and collaterally connected with it, were brought to bear upon that point. But it never was doubted that other combinations – such for example as this, to oppress and ruin, which is imputed to the present defendants – were highly criminal. The doubtful counts of the indictment were considered in argument to be those which concerned raising wages; the unassailable ones – those where general oppression was alleged.

With respect to what seems to be a point of defence, viz: the absence of specific means set forth in the indictment, it might be sufficient to refer to *Collins vs. Commonwealth*, 3 Serg: and Rawle, 224. “a confederacy to cheat, generally, would be indictable before any means should be devised to carry the unlawful purpose into execution. *Regina vs. Best*, 2 Ld: Raymond, 1167, and where the act is unlawful, there is no occasion to state the means by which it is to be effected, &c. In the *Crouse Circuit Companion*, there is a precedent of an indictment against the curate and officers of a parish, for a conspiracy to cheat sufferers by fire out of money collected by a brief for their use; in which the fraudulent intent is stated generally without specifying any preconcerted means of carrying it into effect.”

An opposite principle would cut up the law of conspiracy by the roots, and render its inhibition a dead letter; or would at least confine the remedy to the least aggravated cases. How can you specify where the most imminent danger threatens? The means are as secret as the end is to be disastrous. Mystery and darkness surround the origin, as violence and fury accompany the consummation of the crime. Indeed the half formed purpose often teems with peril, when its embryo



character is susceptible of no description and no name. Let the intention be to dip the lawless hands in blood. An avenging spirit animates each of the individuals combined to execute the deed – but waits for opportunity and means to direct [141] the time and circumstance. With the opportunity, the design becomes no longer punishable, for it is merged in the act itself. A variety of temper and skill gives to each of the conspirators capacity to execute the purpose in a different way. One aims the murdering dagger – one spices the envenomed bowl: one boldly confronts his victim in the field – but all unite in the fell purpose to be accomplished in so many different ways; and it would be a mockery of justice to say that their union should be irresponsible, because it wanted minuteness of detail.

The indictment charges these defendants, with an unlawful combination to injure and oppress the prosecutors and others. 1st and 2d counts. By compelling them to pay certain wages to journeymen, never paid before. 3d and 4th counts. By compelling them to receive into their employment certain workmen whom they had discharged. 5th and 6th counts. By obstructing and interfering with their usual and lawful business. 7th and 8th counts. By preventing other persons from working for the prosecutors, and thus depriving these other persons of the choice of their occupations, and the means of their subsistence.

The principles already established will maintain these charges in point of law, if corresponding facts are exhibited in the evidence. The first maxim of the common law – the *sic utere tuo*, is infringed by the matter comprised in every count. Who can doubt that the assumption of absolute authority over the doings of another; and the practical enforcement of that assump-

tion by coercive means, is inconsistent with the privileges guaranteed by law? And that when this illegal assumption is illegally enforced by means of a deliberate, systematic plan, digested under the combination of various minds, and executed by means of the united force of various arms, it is the subject of an indictment! There is no choice between restricting, a "conspiracy" to a combination to commit mere technical crimes, and extending it to the facts alleged in this case. The former is neither supported by any authority, nor aimed at by the conceded definition of the defendants' counsel, which [142] admits, that crime is not necessary as a means or an end. The latter, I proceed to show from the evidence, must produce the conviction of all (except one) of the defendants.

It is fortunate that no obscurity hangs upon the commencement of the controversy. Wherever mutual representations have been made, there has been no substantial difference except in the inferences which have been drawn. Even at this hour the defence does not consist so much of a denial of the allegations in point of fact, as a justification upon presumed principles of moral independence. A garment, of a kind different from those usually made by tailors, was placed in the hands of some of these workmen. It was a riding dress of thin stuff. A scale of prices comprehending various articles had been prepared by the workmen themselves, but it did not embrace that particular garment. In almost every other case this as well as cloth vestments are made the subject of a special provision; and there is a difference as marked, occasioned by the texture of the material as the shape of the article. All agree that the price is not so much influenced by the actual trouble required in the work, as by the greater or less value

of the subject on which it is bestowed. A costly broad cloth coat will bear a higher charge for wages than a light summer coatee which may contain as many seams and stitches. The latter is sometimes the work of women, and therefore is not regarded as so dignified a subject of employment as the former, which, according to Mr. Scott, men alone have the honour to make. The lady's dress presented a new and embarrassing problem, which puzzled the philosophy of the trade. In the shop below, the masters were willing to be guided by the example of their neighbours. But in the watch tower above, the wise astrologers, after an inspection of their horoscope, discovered under the sign perhaps of the goose and thimble, that the wisest course was to get all they could; and they accordingly blotted out the distinction between cloth and worsted, or rather determined to promote their interest through thick and thin, and placed the pongee amongst the highest orders of habit making architecture. Now, it is not, I admit, conclusive of the merits of the cause, that in all this, the masters were right and the journeymen were wrong. But it [143] is always satisfactory to find that the first deviation from the perpendicular was the act of our adversaries. The reasons upon which I claim the superiority in this respect for my clients, and admonish their antagonists of their early sin, are these:

1. Every thin garment usually made in a tailor's shop, is paid for, at a less price than a corresponding one of cloth. This being unprovided for, must necessarily follow the analogy deducible from other known and established rules.

2. It is very doubtful whether the term habit, or ladies' habit, be not derived from the material, which is habit cloth, as distinguished from broad cloth, and

in that case the garment in question would be totally undescribed in the bill of prices, and must be regulated, not by arbitrary reference to the bill, but by the judgment of competent and skilful men.

3. The judgment of experienced men in the trade is uniform, that the true construction of this scale of prices, and the application of the principles it contains to the particular case, would fix the price below that of a cloth garment. Judges and juries have always listened with deference to the opinions of persons whose knowledge and experience particularly qualify them to judge in particular branches of business.

4. Mr. Watson, to whom reference by agreement was to be made, paid less; and it is not the least disreputable fact in the cause, that some of the defendants untruly declared to the prosecutors that the fact was otherwise.

5. It is in uncontradicted proof, although the circumstance has escaped the notice of the defendants' counsel, that the garment was not of full size; but was a child's riding dress, for which a reduced price, in every case is paid.

After all, the question was rendered altogether unimportant, as the spirit of forbearance which distinguished the conduct of the prosecutors up to the very hour of trial, influenced them from the earliest moment of this "strange, eventful history;" and they yielded to the exorbitant demands which were made upon them, and paid the price which was most iniquitously exacted. They paid it for the sake of peace. It was the only error they have committed. Submission to unjust demands is the purchase money of a repetition of them. And as the prosecutors [144] were sensible that they had been imposed on, they determined to guard against



a renewal of the imposition, and quietly discharged the individuals who had been guilty of it from their service. If it were necessary to enquire into the sufficiency of their motives, they lie upon the surface. Mr. Winebrener told them they had deceived him – when they asked a reason – and he might have added, as it seems was the fact – that he had not work at the time for all the men engaged about the shop.

It is however a principle too precious to be compromised, even by assigning motives for the proceeding, that the discharge was matter of perfect right, without the assignment or even existence of any reason. Let him be without a reason. Let the reason be the disgust which Magnus not only reciprocated there, but impudently extended to the proceedings of the court; let it be caprice. Still it was a right, with which no man or set of men must be permitted to interfere. Was the connection indissoluble? If so, these journeymen are as very slaves as ever were chained to the oar of a galley; for the obligation must be mutual. They also must remain under evil, and under good report, with the same employer, at the hazard of being excluded from every other shop. Mr. Watson acted upon this clear right when he discharged Crouse, for no other reason but because he discovered him to be one of those who had misbehaved themselves in this affair. All the confederates acted upon it by acquiescing in Crouse's discharge, under circumstances precisely analogous in principle to those that had occurred with the prosecutors.

The discharge of these five – Radford, Hough, Wilson, Skeegs, and Scott – was promptly followed by a special convocation of their society. A resolution there passed is the first act of conspiracy and crime. It

consisted of a pledge, mutually given by those who were in the employment of the prosecutors, and encouraged and instigated by those who were not – that the shop should be deserted the very next morning, unless these men were received into it again – that money should be raised by general assistance to support those who should thus sacrifice their own employment, and to bear all expenses incident to the proceeding – and above all, that no work [145] should be done for Robb & Winebrener, any where, or by any body.

These fearful determinations, by a numerous band of fearless men, all of which were carried into entire execution as we shall see, admit of no palliation. They are ferocious – malignant – punishable. But a still darker shade is cast over them by the fundamental principles of the society, in the foul bosom of which they were engendered. What is its character? It was asked from the bench whether it was incorporated. No! its ends and aims are repugnant to all law; they ask no alliance with the pure principles, they disdain all sanctions from the upright ministers of justice. It was suggested at the bar – that the society – incorporated as it was presumed to be – should be indicted! no! combinations for useful purposes, are wisely permitted to enjoy individual relief, from civil responsibility. But combinations for wicked purposes, aggravate instead of removing liability; and were it otherwise, the indictment of a corporation (which for a long time the law found it difficult to approach, even to enforce many of its contracts,) would be among the most extravagant novelties of the cause. Still I ask what is its character? Flaherty has ventured to call it a beneficial society! Yet its by-law makes it highly penal even to propose that it shall assume the office or the name. I called

them an assembly of demons. But this provision deprives them even of that "bad eminence," for while the devils can quote scripture, these men exclude its principles and name. If charity be indeed the saving mantle of the sinner upon earth, and the spotless robe of the heavenly seraphim, what shall they be called who denounce and deride its benedictions?

It is to be regretted that punishment will fall upon only a few of those who committed the offence. It is the more to be regretted, because as far as we can determine, the defendants, although the instruments, and likely to become the victims, were not the most prominent, or the worst disposed of the band. An association so contaminating, must carry into all its parts the liabilities to peculiar danger. They were not the worst men in Israel, on whom the tower of Siloam fell. Were their misdeeds produced by the mere [146] impulse of even misguided feelings, they would be less censurable. But ample time elapsed for the exercise of a sound judgment. They permitted day after day to pass – and night after night they had an opportunity to consult their pillows. And then took their measures, as the result, not of indignant warmth, excited by real or imaginary injuries, but the settled, premeditated and deliberate purpose, which gratified a malignant spirit at the sacrifice of character, and the peril of future employment. In this pernicious association was arranged the plan that was to separate husband from wife – to cast upon the community a body of vagrants – and to receive at last, as the reward of self-destruction, the precious consolation that their long tried friends and benefactors were involved in ruin no less absolute than their own. Enough is known of this society to prove its demerits. But more and worse purposes are

concealed. When that record of abomination, the pretended book of minutes, was produced, it required no spirit of prophecy to foretell that it had been mutilated for the occasion. The moment it was triumphantly laid upon the table, I suggested to my colleague that he would find the meeting in question omitted. And accordingly, there is not only no trace of its cloven tread, but the fatal leaf is torn from its place, and committed, together with the notice of the meeting, to the flames.

It has been supposed that this society is impotent, because persons who are not members of it, may be employed in the shops deserted by those who are, without exposure to any of its maledictions. Every journeyman, however, is required to join it: and who has been discovered that is bold enough to refuse? Should he hold out against the requisition, no fine indeed can be imposed directly on him. But the enginery of the society, ponderous and extensive as it is, can still be wielded so as to bear upon him. No members are permitted to work in the same employment with him, under the dread of renewed and increasing penalties, which are continued and accumulated until they abandon his unhallowed association. The consequence is certain. He must become an associate or starve: and none have been found bold enough to put to the test the latter part of the alternative.

[147] Such was the power, and such the determination to enforce it. I am to show either unlawful ends, or unlawful means. The ends were the deprivation of the prosecutors of their bread. The means were not only unlawful throughout, but some of them highly penal. I proceed to enumerate them.

1. Breach of contract. They worked by the piece –



and the whole twelve, who marched into the shop with their unfinished work in their hands, were under contract to complete it. Yet to force their employers to comply with their wishes, they first threaten, and then actually break off in the midst of their engagements, leaving the prosecutors to the necessity of violating the contracts which they had made with customers. It is not mere argument that these contracts have been broken. You have seen the Alderman's docket, where it has become matter of judicial record; for against each individual judgment is entered for damages measured by the value of the garment which he had in hand.

2. Connected with this civil wrong, is an act of extortion on the part of those who were discharged, and a concurrence and encouragement by the rest. It was under undue compulsion that the exaction was submitted to; and it followed up the same course of compulsion, and continued to resist coercive measures, by the exercise of the right to discharge the original extortioners. If the society provide the funds to meet the judgments, its members are guilty of maintenance and perhaps champerty.

3. Eaves dropping. This hovering about the house, by night and by day – creeping under the window – watching every movement within – and preventing its execution without, is within the meaning of the common law, an offence which is prohibited and punished under this name.

4. Seducing workmen from the service of their employers. Is there any doubt of this fact? Let Kline, who was threatened with being publicly disgraced if he continued his services, and was promised "money in these slack times," if he refused them. Let Mayhew,

in whose domestic pillow they planted thorns – Let poor Shields, with whom the Mannikin Magnus was “disgusted” – answer the inquiry.

5. Vagrancy. Which one of them could have exhibited any [148] means of subsistence if he had been arrested under the vagrant act? The frail dependence upon the promises of an irresponsible association – promises to reward iniquity, would be no defence.

6. Trespasses, as committed by Foy, Donahue, Moore, Wilson, and Koons, who had been, as it is admitted, forbidden to enter the house, and yet did so without any justifiable motive, aggravating by their presence, discontent and anger, and producing in one instance at least, quarreling and blows.

7. Assaults and batteries, as in the case of Boner with Chamberlain. This is denied indeed by the Constable Milliman, who thought it an idle waste of time to be keeping the peace, and longed for the more lucrative functions of his appointment, a distress for rent of the goods of the unfortunate – or a levy and sale under an Alderman’s judgment, He, like an experienced and veteran Dogberry, saw no danger – imagined no assault. True, “the sticks flew,” but that was mere sport.

8. Threats even of murder, the natural consequence of the riots that were kept up for weeks together about the door. Hunter not only menaced Chamberlain with assassination for the crime of continuing in Robb & Winebrener’s employment in defiance of the mysterious club, but substantially repeated his bloody threat before the magistrate, when it was made the subject of inquiry and complaint.

These were the direct and immediate consequences flowing from the resolution in which the various defendants, except Fulse, bore their part. In some of the

proceedings all of them participated; and some of them in all. But the indirect or collateral results were scarcely less pernicious to themselves and others. Could a moral community – one of industrious habits, that delights in the proper application of the Chinese proverb, which imports that for every idle man there must be one to starve – witness a scene more degrading than that which presented itself? A number of able bodied young – (men, I had like to have said; but certainly very able bodied young) – tailors crowding at the corners of the streets, standing guard from sun rise to sun set; with no more honourable occupation than dogging the messengers of the prosecutors, through lanes [149] and alleys, to every part of the town – and then, five minutes after work was left at the shop of those who had kindly consented to finish it – ringing the knell of denunciation in their ears!

Like a destructive tempest, which in its fury spares no object that comes within its reach, this wide spread conspiracy overwhelms friend as well as foe. The primary object of attack is the shop of their employers who had offended them. But an unsparing vengeance prostrates even those who had not, if they stand in the way of their great design. Let a single thread pass from the infected region, to an otherwise wholesome air, and it immediately taints it with the poison of destruction. Every master workman who ventured to receive a garment from the prosecutors, did it at the peril of an immediate pause to all his business. As long as it remained, every arm was paralyzed; and until it was returned to the great lazar house, the cessation of employment was enforced. The attempt to overawe, succeeded every where that we have been able to inquire into the fact. Mr. Jewell smiled incredulously when

he was told that his power to work for whom he pleased was to be circumscribed; yet he soon found how entirely he was within the control of this formidable combination, whose colossal limbs extended far and wide. He received a coat, and promised to complete it; but the spirit of subordination instantly deserted his establishment, and the coat was returned unfinished as it came. Mr. Campbell's promises and expectations terminated in similar disappointment. Not only did his journeymen refuse to do the work which he had promised should be done for the prosecutors, but the moment it was placed even in the hands of his boys, all his business ceased, and its activity was not restored until he had surrendered, at implicit and unconditional discretion.

Thus occupation and hope seemed alike to have left my clients. If they looked to the employment of journeymen themselves, they found those trembling victims of fear unable and unwilling to encounter the denunciations which their associates had hurled against all who should engage with them. If they asked for the kind offices of their brother masters, they met indeed willing minds, but impotent and disabled hands. [150] Ruin was inevitable, unless they could be protected by the law. They found that the individual weakness of their enemies was no impediment to the fatal exercise of their united strength. Society is held together by various ties: some powerful enough to defy, and others apparently so feeble, as to invite the effort of the unreflecting to break them. But it is in the course of providence frequently to make the strong the vanquished, and the weak their victors. The mighty monarch of the forest was indebted for relief from the hunter's toils, to the humblest reptile that walks the earth. Neither



the character of the prosecutors – earned and established by a course of fair and upright dealing – nor their industrious devotion to their calling – nor their admitted skill and superiority as tradesmen – nor the imputed wealth, which had crowned their well directed industry – nor all combined – could avail them against the determination of these seemingly inconsiderable antagonists. Weak as they apparently were, and despicable as some among them have shown themselves to be, they were able to bring to the verge of ruin the strong and respectable. From the recesses of their pandæmonium they issued a curse, from the effects of which it seemed impossible to escape. An interdict was imposed, effectual as that which has sometimes emanated from the holy see, and suspended all the functions of its cardinals. A spell more binding than any that could result from the darkest incantation of the necromancer. A better commentary than these events afford, could not be penned, upon the wisdom of the law against conspiracies. Alone, the parties implicated were nothing – less than nothing. United, there was no limit to their authority, except that which is placed in your hands. The same force of combination which has been so mischievous to others, when practised by the defendants, may be still more destructive in its recoil. Let but the masters find that the law affords no redress, or rather that the kindly sympathies of a jury may be played upon by the contrast of self-sought poverty and imagined wealth, and a counter conspiracy may be the consequence. Such a measure, with numbers united to the ability to keep alive the contest until the deepest purse shall decide the battle, could not be doubtful in its issue, or protracted [151] in its duration. Withdraw from any conflict the attributes

of time and chance, the superintendence of providence, and the protection of the law, and the race will always be to the swift and the battle to the strong. The prosecutors are indeed interested in the result of the present trial, for they have relied upon it as better than a measurement of physical strength: the community is interested in it, for it will either perpetuate the tranquillity which a resort to its influence, has commenced; or it will open again a flood of irregularities destructive to some, and pernicious to all. But none are half so much to be benefited by a verdict for the commonwealth as the defendants themselves. The secure establishment of the law which is their only possession, will protect them from encroachment; and if it ever should be imposed, will relieve them from oppression. The lesson which I trust they are now about to learn, will restore their habits of industry and subordination, — replenish their exhausted exchequer — and teach them a wisdom, which, although in an exalted sense it is the object of the philosopher — yet, in proper adaptation, is equally valuable to the humblest of mankind. They have been termed unfortunate and oppressed: but their oppression has been their infatuated folly, their only misfortune has consisted in being unwise. Save them from a war of extermination, in which they must be the first, if not the only victims. Treat them, as in intelligence and moral foresight they are, as disobedient children, and reclaim them from idleness — from folly — and from vice, by the wholesome chastisement of a conviction.

[153] THE RECORDER'S CHARGE

In a case of so much apparent, perhaps real difficulty, and as respects the nature of the offence and the number of the defendants so complicated, it is highly

important to examine, in the first place, the charge contained in the indictment, and to have a clear and definite idea of the nature of the offence, before we inquire how far the mass of evidence we have heard, applies to the several defendants. The indictment contains eight counts, each charging a distinct offence, or being a different mode of describing the same offence. To several of these counts is annexed a description of the means by which the alleged conspiracy was to be carried into effect – these are termed specifications or overt acts. Omitting for the present the legal phraseology of this indictment, relieving it from the burthen of form with which it is cautiously but rather unnecessarily encumbered – it contains a charge of. . .

[Resumé of the indictment is omitted.]

[154] The means adopted are generally: 1. Desisting from work. 2. Assembling in the street – obstructing workmen in the employment of Robb & Winebrenner – using threats and promises to induce them to leave it – pursuing one and assaulting and beating another, and sending a threatening letter to a third.

This is the nature of the conspiracy charged in the indictment, with the means adopted to carry it into effect. Here it is proper to observe, that the agreement between the parties is the gist of the offence; it is altogether immaterial whether any act be done in pursuance of it – and before I proceed further, I will add that the five persons first discharged by Robb & Winebrenner, viz. Radford, T. Hough, James Wilson, Skeggs and Scott, and the others viz. the two Moores, Mead, Conway, Crous, Donnelly, Miller, M'Keever, M'Macken, Laboullés, L. H. Wilson, Beatty, Jonathan Hough and Page, who gave up their work, are they to whom the charge of conspiracy to raise the wages

exclusively applies, and they as well as the other six, except Fulse, are included in the charge of injuring and oppressing Robb & Winebrener and the other persons, in the manner stated in the 4th overt act to the first count, and in the 7th and 8th counts.

The offence, which in law is termed a conspiracy, is the associating, confederating, and agreeing, and often acting together to the accomplishment of an object, either in itself illegal, or to be attained by illegal means. In deciding whether the agreement charged is either in morals or law a crime, we must inquire (taking it for granted, what in this case can not be denied,) that a combination did exist among these defendants, or some of them: 1st, its nature, 2d, the means used to accomplish it, and 3d, the object to be attained.

There are two points of view in which the offence of conspiracy may be considered; the one, where there exists a combination to do an act, unlawful in itself, to the injury of an individual, or of the public, taking the term prejudice as applicable to an individual, with some qualification, as will be [155] shown hereafter, and not considering it as meaning an injury to the pecuniary interest of another, which may be easily and innocently, and, to the public, often advantageously effected, by that personal injury, which results from the depression of the price of labour by successful competition – by others in the same occupation, or from other obvious and natural causes; not considered as that kind of injury or prejudice (to adopt the language of the defendants) which a man suffers when he is disappointed in a good bargain, or profitable contract, or does not derive the same profit, the usual gain, and often artificial advance on his skill and labour on which he had calculated, either from a monopoly secured, or from



other causes which he had supposed were exclusively within his own control. In some cases the term is wrongfully to injure or prejudice a third person, which can not be presumed to mean from any of the causes just stated; in some it is said a conspiracy to ruin a particular person &c. This is one point of view in which the offence may be considered. The other is when the act done, or the object of it was not unlawful, but unlawful means were used to accomplish it; which depends on the common principle, that the goodness of the end will not justify improper means to attain it. If, therefore, the defendants have confederated either to do an unlawful act, wrongfully to injure others, (always using that term in a qualified sense) or to make use of unlawful means to attain it, they would be liable to the charge of conspiracy; and when I use this word, I beg the jury not to be led away by high sounding terms which seem to convey much more than is intended; and here also, I will say once for all, that by the term conspiracy, nothing more is meant than unlawful agreement.

It is said by Judge Gibson, in the case of the indictment against the master shoemakers, who it seems, were accused of a conspiracy against the journeymen, that the precise point whether an agreement not to work except for certain wages, or what is the same thing, not to employ any journeymen who would not work for wages fixed by the employers, had not at that time (1821) been decided even in England to be unlawful, and in this he seems to be confirmed by the latest and certainly the best book on Criminal Law in England, Russell on Crimes, [156] 2 vol. 1801, in which it is said that in many cases an agreement to do a certain thing has been considered as the subject of an indictment for a conspir-

acy, "though the same act, if done separately by each individual, without any agreement amongst themselves, would not have been illegal; as in the case of the journeymen conspiring to raise their wages; each may insist on raising his wages if he can; but if several meet for the same purpose it is illegal, and the parties may be indicted for a conspiracy. It has been said that perhaps few things are left so doubtful in the criminal law as the point at which a combination of several persons, in a common object, becomes illegal. It appears, however, to have been holden that if such persons illegally concur in doing an act, they may be guilty of conspiracy, though they were not previously acquainted with each other."

There is something qualified and guarded in the language used, in addition to the express declaration that it is doubtful at what point combination becomes conspiracy, the terms "it has been considered," "it has been said &c." imply doubt, even in England, and in the United States, I am inclined to think, on the authority referred to, that in no case has the law been settled to the extent contended for by the prosecution. In the latest decided case, Judge Gibson informs us that none of the prior decisions, beginning with the one decided in this court by the late Recorder, nor the one in New York, or the last in Pittsburg, go the length in support of the general principle on which this prosecution is founded. None of these were analogous, as will appear hereafter, to the present. The one decided by Justice Gibson being the last, I feel bound to take the law from it in preference to the prior cases. . . . Resting, therefore, on this respectable authority, I am disposed to give the law of conspiracy a more liberal construction – to leave every man in the community to exercise

his faculties to regulate his conduct with as little restraint as possible, provided he permits others to do the [157] same. I can not accept the law as it is said to have been decided in England, for the reasons already stated; nor can I accede to it as laid down by Judge Roberts at Pittsburg, when he says, "that when divers persons confederate by indirect means to prejudice a third person, (terms certainly very vague and indefinite,) it is a conspiracy. A master workman may be prejudiced in a variety of ways, which no one would pretend was indictable: he may be prejudiced by not receiving his accustomed profits, by others entering into competition with him, by which the public interest, instead of being injured, would be promoted, although the individual may be prejudiced in the manner described. The law is, in my opinion, correctly laid down by Judge Gibson, when he says, a combination is criminal when it exists "to depress (as in the case then before him,) the price of wages below what they would be if there was no recurrence to artificial means, on either side." By artificial means, I can not suppose he intended an agreement among the parties themselves, not to work for less wages than they had agreed to accept, especially when he says, that in the New York case, the mayor expressly omits to decide whether such an agreement is indictable *per se*. I hope I am not understood as commending the course pursued by the defendants; on the contrary, I condemn it as the height of folly and imprudence; and more injurious to themselves than it possibly can be to others. If there was an agreement among the journeymen to operate on other parties, on innocent third persons, not privy to the original contract, disclaiming its fancied benefits, and unwilling to incur its perils, such an agreement would no

doubt be criminal, especially if carried into execution. The nature of the original agreement between the parties, as admitted by both, was unquestionably fair, whether really and essentially beneficial to the journeymen or employer, is not now the question. It may be reasonably doubted whether such agreements do not, on the whole, work more injury than good – whether, in all cases, it would not be better to permit labour to be operated upon and regulated by natural and not artificial causes – to permit every man to work at his own prices – to make his own contracts – and thus promote competition, by which the public, as well as the individual [158] would eventually be benefitted. As between the parties, however, to this agreement regulating prices, it was no doubt perfectly legal; its object, ostensibly at least, was to protect the interests and assert the rights of the journeymen against oppression, real or supposed, of the master tailors – to do by joint and united efforts, what it was supposed could not be effected by individual exertion – to secure certain wages mutually agreed on, and which, we may infer, the parties considered fair and equally advantageous to both, by producing a permanence and uniformity of prices. This agreement, it is contended, secured to the journeyman a fair and reasonable remuneration for his labour, while it also enabled the master workmen to derive a just profit on the skill and capital bestowed on and invested in the material, on which they were both employed. This was the nature of the agreement, and to carry it into effect was, as the journeymen maintained, all that they contended for. On the part of the prosecution it is admitted that the agreement as to prices existed, the table of which was to regulate both, that while they were willing, and in all particulars had adhered to it, the de-



fendants, by a combination among themselves, attempted to extort, and in one instance actually obtained more than, under the implied contract, as existing in the bill of prices, they were entitled to. If there was a mere difference of opinion between the journeymen and their employers, as to the construction of the contract, and the parties to it had refused, the one to work and the other to employ, I am not prepared to say that an agreement to that effect in either, provided it did not extend beyond themselves, would be illegal; a violation of the contract might be the subject of a civil action, but not of a criminal charge; I consider, therefore, that the conspiracy without the overt act charged in the first count of the indictment, is not criminal, provided no other means were used than an agreement not to work; this leads me to a consideration of the overt acts or the means taken to carry the alleged conspiracy into effect, the first of which is threatening to leave the service of Robb & Winebrener, unless they would agree to pay the wages demanded, and reinstate the men who had been discharged. On the difference of opinion as to the prices, I have [159] already said, that the defendants had as much right to leave the service of their employers, as the employers had to discharge them, a right which was claimed and exercised. It can not be contended that a man in a free country may be compelled to work at other wages than he considers himself entitled to: So undoubted does this right appear, that no combination or agreement, however extensive, is illegal, provided, let it be borne in mind, no illegal means be employed, nor the rights and interests of other persons, not parties thereto, be invaded or affected. This rule I consider to be in accordance with the principles of strict justice, and not at all impaired by the authority

of any of the cases cited. It follows, therefore, under this qualification, that neither the conspiracy charged in this count, nor the means taken by the alleged overt act to effect it, are illegal.

The 2nd overt act is leaving the service of Robb & Winebrener, unless they would re-employ the five men, who had been discharged. As to the legality of this act, although at first view it would seem as unreasonable to compel the employer to retain a man whom he chose to discharge, as to compel the journeyman to remain contrary to his wishes; yet, as it was only under pain of leaving the service of Robb & Winebrener, and that for a difference of opinion as to the construction of the bill of prices, which might reasonably and conscientiously be entertained without any imputation of guilt, I can discover nothing here to constitute a legal crime. As well might any master tailor, if associated with Robb & Winebrener, or even Robb & Winebrener themselves, be convicted of a conspiracy against the journeymen for turning them away, because there must be an agreement to that effect. If the journeymen really and conscientiously, though erroneously, thought that their friends were injured or oppressed by their employers – that they had a right to the wages claimed – there is no legal objection; nothing certainly constituting an indictable offence, in their withholding their own services, until what they considered justice was done their associates. If they had the right individually, I can see no reason, why the same right might not be exercised by them collectively and simultaneously, nor can I conceive a case, where, if the object be legal, [160] that which is done by one becomes illegal only when done by many, provided the means are not criminal. Judge Gibson says, “the motive may also be im-

portant to avoid or induce an inference of criminality. The mere act of combining to change the price of labour is perhaps evidence of impropriety of intention, but not conclusive, for if the accused can show, that the object was not to give an undue value to labour, but to foil their antagonists in an attempt to assign to it by surreptitious means, a value which it otherwise would not have, they will make out a good defence." In the Shoemakers' case in this city, the Recorder, Mr. Levy, instructed the Jury "that it was no matter what the defendants' motives were, whether to resist supposed oppression, or to insist on extravagant wages, but there, the rule as applied to that case, where the combination was intended to coerce, not only the employers, but third persons, is not of universal application. A combination to resist oppression, not only supposed but real, would be perfectly innocent; where the act to be done, and the means to accomplish are lawful, and the object to be attained meritorious, combination is not conspiracy." What on this occasion were the consequences resulting from the acts of the defendants? How are the rights and the interests of the public affected? The work is not done; the employers are put to great inconvenience; their customers are disappointed; and, what is not the least evil, the journeymen who confederate remain idle, useless, for a time at least, to their families, and unprofitable members of society. The employers may have, and on this occasion actually had their suit for damages; but beyond this, I can not discern what are the consequences, either to the parties or to others, nor how the community is affected, certainly no more than in any breach of contract, between individuals. I say nothing here as to the rules of the society of journeymen tailors, which, so far as we have had an

opportunity of judging, are, in some respects, illegal and oppressive, operating not only on the members, but on others; because their agency is not charged as one of the overt acts by means of which the conspiracy was to have been effected. If it had been, the case would have come within the rule. It is sufficient for the purposes of the defence, that the [161] agency of the society is not the means alleged to have been used. So far, therefore, as respects the conspiracy stated in the first count, and the overt acts, by which it was to be effected, I am not prepared to say that it constitutes an indictable offence. Here I wish to be distinctly understood as confining my observation to the charge as contained in the indictment. If it could be shown that the society had interposed by all the means in their power to compel Robb & Winebrener to re-employ the men discharged, it certainly would present a very different case, on which it is unnecessary to give an opinion: it would then be the same in principle as the one formerly decided here, in New York, and Pittsburg, where the defendants were all charged as members of associations, the constitutions and by-laws of which became the subjects of legal investigation and adjudication. It would have been better, if such had been the case on the present occasion, the root of the evil would then have been struck, or at all events, the real legal merits of the case discussed, because it must, I think, be evident, on the testimony, that on this occasion whatever was done by the defendants proceeded from the association of journeymen tailors.

The third overt act of the first count, viz. assembling near the store of Robb & Winebrener, intercepting their workmen, &c. may or may not, according to circumstances, be an illegal act; it is not charged to have been



done wrongfully or unlawfully, and, therefore, we are not to presume it to be so, but this part of the charge is not material, in as much as there are other acts in the same count, which in my opinion amount to an indictable offence. The treatment of Chamberlain and the assault on Shields (whether proved or not, is for you to decide) are illegal acts. The first is charged to have been done in a turbulent and disorderly manner, and if three were engaged in it, it amounts to a riot, and might have been so charged. This is therefore an illegal act, by means of which the object of the conspiracy was to be effected, of both of which, you must, however, judge on the evidence.

The fourth overt-act is holding correspondence with, and, by promises and threats, endeavouring to induce certain workmen to leave the service of Robb & Winebrener, sending a [162] threatening letter to Kline, of which, as there is no evidence, it is unnecessary to speak. The other facts constituting this overt act, tended not only to affect Robb & Winebrener, but other persons, master workmen, but more especially journeymen, who neither complained nor had cause of complaint, who alledged no injustice, and who were satisfied, and agreed to work for the prices offered by the employers. To compel these men to demand what they were conscious of not deserving – to compel them, perhaps in the decline of life, willing and anxious to work and support their families, either to live in idleness and be supported by a kind of charity, or be exposed to all the indignity and suffering which the many, when combined, can always inflict on the few, and which in this case was actually threatened, can not for a moment be tolerated. To suffer young unmarried men, as the defendants or some of them probably are, unrestrained

by the care of a family, active and capable, in the prime and vigour of life, at the head of their professions, who can come and go, and command the highest wages, to tyrannise over and oppress others with families and less ability to support them, can not have the semblance of law or reason; to conspire to do so is undoubtedly a criminal offence. These young men, have an undoubted right, by agreement among themselves, to regulate their own conduct, to ask as much as they please for their services, to continue, or to leave the service of any employer, as reason, inclination, or caprice should dictate; but the moment they interfere with the rights and privileges of others, equally valuable and sacred as those, which, in this prosecution, these defendants so jealously contend for, they are criminal, and if the means employed be combination, they become conspirators. If it were otherwise, it must, I think, be manifest to you, that there would be injustice done, and cases of individual suffering frequently occur which considered as a public offence, ought not to pass unredressed and unpunished. The old and infirm would be placed in the power of the young and healthy; the one might be enjoying comforts, and even his pleasures, while the other could scarce give bread to his family. I lay entirely out of view the allowance made by the society, partial and temporary as it necessarily must be. No fund, no treasury, could [163] long support its members in idleness, who, to accomplish their objects, must be numerous. The means would soon fail. So far, therefore, as these defendants by combination attempted to injure and oppress others, more especially their fellow journeymen, (I say here nothing of the interests of Robb & Winebrener,) such acts are criminal; and, if proved, will be subject to the penalties of

the law. The act charged in this indictment is clearly illegal, and, of course, under the most favourable construction which can be given to the law of conspiracy, any combination to effect it will be indictable.

As I consider this the most important charge, and by far the most exceptionable and illegal part of the defendants' conduct, I request you to inquire whether it is supported by the evidence, and in so doing, you must lay out of view entirely, the interests of the employers, and consider how far other journeymen, and, through them, the public are affected. Of this the defendants professing to advocate the rights of the journeymen, and formed into a society for that purpose, will have no reason to complain. As the 7th and 8th counts contain charges of a similar kind, or the very same offence variously described, it may be as well to consider them in connection with this, that is, offences more immediately against their fellow journeymen, who are willing to work, without being accountable for their actions to others or to the arbitrary rules of any individuals or society to which they do not, and have no desire to belong.

The 2d count charges a conspiracy to augment the wages, and the 3d to compel Robb & Winebrener to employ the discharged men. The observations already made apply to these charges, viz. that if there was a difference of opinion on the construction of the bill of prices, there could be no offence in agreeing to abstain from work until they obtained the wages contended for, or until others who they thought were unjustly discharged, were again taken into employment. If no other consequences were intended to follow than leaving off work, and no illegal means adopted – if the rights of other journeymen were not affected, there is

in my opinion, no crime. The first overt act to the 3d count, viz. threatening to leave off work, unless Radford and others were re-employed, is liable [164] to the same objection. The 2d overt act corresponds to the 3d overt act in the 1st count. I pass over all the other charges as contained in the 4th, 5th and 6th counts, with the several overt acts, as they are but different modes of charging the offence contained in the preceding counts, and they affect only the interests of Robb & Winebrener.

To the 7th and 8th counts, the first with, and the 2d without an overt act, I have already directed your attention. I consider them, for the reasons already mentioned, as more important than others; more important, because they contain charges of conspiracy, by which the rights of not only other journeymen tailors, but other master tailors; viz. Jewell, Mahan, &c. in the employment of Robb & Winebrener were affected.

It must have become obvious to you, gentlemen, that it is my wish to direct your attention to the sole inquiry, how far the combination charged and the overt acts are calculated to affect the rights of innocent third persons, This is all the case requires. It is unnecessary to go out of our way to examine the question as to the right to combine to raise wages; which has never been decided on in the United States, and for this I have the authority of the present Chief Justice of the state. What then are the facts from which the design of the parties by conspiracy to affect the rights and interests of others is to be inferred? First, as to the fellow journeymen, and then as to the master workmen, who were called on to perform work on the application of Robb & Winebrener, after they had lost the service of the defendants and others, who had been seduced or com-



pelled to leave their service. To begin with the evidence of Mr. Winebrener, after the five journeymen had refused to accept the offered price, and been subsequently discharged, and the fourteen others had thrown up their work, and after they had been sued before Alderman Binns, which was on the following day, they remained, as Mr. Winebrener says, in squads in the street from day to day, following to his destination every person who left the house with work, to ascertain who occupied their places, and accepted work which they had refused. If this assemblage, following in the street, and other of the numerous facts given in evidence, and so recently [165] and fully stated, had for their object, to ascertain who worked for Robb & Winebrener, and then, by the means particularly stated in the indictment, to punish them for so doing – for gaining an honest living, and Robb & Winebrener for enabling them to earn it, it is unnecessary to say to you, that this constitutes an offence – an act of oppression and injustice to individuals who have had no part in the controversy, and no other view, so far as we know, but earning a support for themselves and their families. I do not go into all the evidence on this point, because it has been recently and forcibly detailed to you by the counsel. I can not, however, omit alluding to the proceedings of the society, respecting which I must say, though they are not alluded to in the indictment, that if a meeting was held with a view to prevent work being done by journeymen, or in the shops of Jewell, Campbell &c. it would be evidence of a conspiracy to that effect. There is no doubt an effect was produced of a most distinctive character by some cause, for no work was or could be done while work from Robb & Winebrener was in their shops.

To the point stated, and the evidence in support of it, I advise you to direct your attention. To do more would perhaps embarrass you; at all events it is unnecessary when you come to decide this case, to adopt more than one of the questions suggested to the jury by Judge Roberts; ask yourselves, did defendants prevent the undoubted right, which every man has to employ his faculties, and engage his labours in any manner, and in the service of whomsoever he thinks proper? Rejecting that vague question, which the same judge, in my opinion, rather unnecessarily introduces, viz. did the defendants confederate by indirect means to prejudice a third person? I consider this a vague question, which no jury can answer satisfactorily, because they do not exactly know what is the precise legal meaning of the term, indirect does not always mean illegally to prejudice, it may be, as already stated, by means not only legal but commendable.

You now have this case before you, and must decide it on the law and evidence. I need not repeat the only question which I think you are required to decide. It is important, not only as affecting the immediate parties, but other masters and [166] journeymen, and the community at large. I conclude with the words of the respectable judge I have just referred to; "If the journeymen have a right to combine, the master workmen might also do it." The absurdity and inconvenience of sanctioning such a doctrine is too apparent to require a comment. Combinations amongst master workmen, in any of the mechanical arts, tending to create a monopoly, or to restrain the entire freedom of trade, would be equally reprehensible with those under consideration. Indeed in such cases the combinations are no less prejudicial to many of the individuals

composing them, than to the public. They may afford a monopoly to a few of those concerned; persons whose characters as workmen and as substantial men, are established, will benefit by such associations, whilst the young mechanic and the stranger, whose talents are unknown, the moment they become members of such associations, under the specious name of master workman, they in fact enter into a state of vassalage; they almost inevitably become the journeymen and dependants of the other class. Whereas if they were at liberty to make their own contracts, and work at their own prices, opportunity would be afforded to display their skill and capacity as mechanics, and they would thus have a fair chance of placing themselves at the head of their profession or trade. In the character of journeymen, whatever skill and taste their work may display, is usually placed to the credit of the master.

[The defendants were found guilty on the third count of the indictment, and not guilty on the others. Motions in arrest of judgment, and for a new trial were made and reasons filed. By agreement of counsel, the argument on the motions was postponed until December Term, 1827. An inspection of the record shows that the motions were never argued.]

## VI. PHILADELPHIA SPINNERS, 1829 KENNEDY *vs.* TREILLOU

From Hazard's *Register of Pennsylvania*, Jan. 17, 1829, p. 39.

QUARTER SESSION – Philadelphia County.

Commonwealth *ex relatione* Edward Kennedy *vs.* John Marshall and J. J. Treillou. – *Surety of the Peace*. January 1, 1829.

Commonwealth *ex relatione* Felix Campbell, *vs.* Thomas O'Daniel. – *Surety of the Peace*.

J. R. Ingersoll and Dunlap for Relators – P. A. Browne and A. A. Browne for Defendants.

This was an application to continue the recognizances entered into by the defendants before Mr. Justice Goodman, on the 14th November, 1828. The relator, Kennedy, deposed, that he went to the cotton factory of Messrs. Borie, Laugerenne & Keating, at Manayunk, on Friday the 7th of November last, to obtain employment. Upon coming out of the building late in the afternoon, but before sun down, he was met at a short distance from it by five men (among whom were Marshall and Treillou,) by whom he was questioned as to his objects at the mill; they inquired whether he had made a bargain, and said, "if he had not, it would be better not to make one; and that there were men enough there, and that it was hard to be taking the bread out of other men's mouths;" and further told him, that "as sure as he should engage himself there as a spinner, so sure should he lose his life," and both the defendants swore they would have their own wheels back again, or they would lose their lives in the



attempt. Kennedy further declared that he was in fear of his life from the above threats, and prayed that the defendants might be bound in proper recognizances to keep the peace toward him.

It also appeared that the defendants were cotton spinners, had formerly worked at this same factory, which they had left, and were then out of employment, but continuing to live in the immediate vicinity of the factory.

The relator, Campbell, deposed that he was sent by Mr. Keating to accompany one James M'Garvey to Messrs. Wagner's Factory, where he was looking for employment; upon his return he was met by the defendant, O'Daniel, who inquired whether he "had got work for his apprentice;" and being told it was no business of his whether or not, replied by threats of violence against Campbell, when he should get a proper chance.

It appeared that this defendant, O'Daniel, was a cotton spinner, who had formerly worked at the factory of Messrs. Wagners, and was then out of employment.

The only defence set up was an attempt on the part of Triellou to prove an alibi. It was alleged that at the period when the threats were made to Kennedy at Manayunk, Treillou was in the city of Philadelphia, and did not return to Manayunk until about seven o'clock that evening. A number of witnesses swore that they saw him in town that day after four o'clock, p.m., and one, that he accompanied him to town the day before, remained with him that day, slept with him in town on Thursday night, and accompanied him to Manayunk the next afternoon (Friday, 7th) where they did not arrive until about seven o'clock. The witnesses examined on the part of Treillou were,

James Mullen, Francis Elliott, Thomas O'Daniel, John Richardson, Hugh Whiteman, Jacob Hollasan, William Crook, John Hamilton, (all cotton spinners, who declared that they were not at work anywhere,) Samuel M'Quay, Richard Johnson, Nicholas Randall, Ann Dickinson, and Thos. Haslam. On the part of the relator, Kennedy, several witnesses swore positively that they saw Treillou at Manayunk on the afternoon of Friday, with Marshall, at the time when the threats were used, before dark that evening. Wm. Welsh, a carter, residing at Manayunk; Wm. MacFaden, a store-keeper there, Michael Gallagher, who was at work on the turnpike when Treillou passed him with Kennedy, and Mrs. Bridget McCormick, were all positive as to the fact of Treillou's being at Manayunk, at the time sworn to by Kennedy. James Niles also was examined as to further threats by Treillou on the 12th of November.

KING, *president*. I will continue these recognizances until the next Court of Quarter Sessions, and I will briefly state my reasons, for coming to this conclusion. The case, upon the evidence, is certainly not without considerable difficulty; the contradictory statements of the witnesses produce more embarrassment than is ordinarily met with in a matter of this kind. But, upon the whole, from the spirit and temper which is manifested, the ends of public justice will be most effectually answered by imposing a salutary restraint, which may tend to check the illegal measures which seem to be in progress. For all parties concerned ought to be convinced that combinations and conspiracies of this character are illegal, and we have seen in numerous instances the dangerous tendency of such conduct. In our country, but more especially abroad, combinations

like these have led to consequences the most disastrous. These individuals ought to know that their proper course is to seek redress for their injuries, if they are suffering any, in the courts of justice, which are as open to them as to their employers. Here the law recognizes no difference between the rich and the poor, the employer and the employed – at the bar of our courts they stand upon perfectly equal ground, and the law will as soon punish any unlawful combination of the employers, as of their journeymen. But it will not permit any man or body of men to redress their own injuries, whether imaginary or real, and will promptly repress all acts of violence, whatever may be the pretext of their adoption. In the present case, the positive testimony of Kennedy, as to the threats made use of by Treillou, is corroborated by several other witnesses, whose respectable deportment and consistent statements carry great weight with them, and whom the Court cannot disbelieve without imputing intentional falsehood; whereas the evidence on the other side may be so far true as to his being in town that afternoon, and yet the witnesses may err in point of the time of day when he left there; and every one conversant with the evidence usually given in similar proceedings, is perfectly aware that no more common mistake is made by witnesses than that of fixing from memory the particular hour or minute at which an occurrence has taken place. Great weight is also given by the Court to the evidence of John Niles, as to the violent language and menaces of Treillou in his conversation with him.

Let the recognizances be continued until the next Court of Quarter Sessions.<sup>8</sup>

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<sup>8</sup> No further record of this case has been found.— Eds.

## VII. BALTIMORE WEAVERS, 1829

### REPORT OF THE TRIAL OF THE JOURNEYMEN WEAVERS IN BALTIMORE CITY COURT

From the *Banner of the Constitution*, Dec. 5, 1829, reported for the Baltimore  
*Republican*.

June Term, 1829.

The State against Pomeroy, Doyle, Nesbit, Aspinall, McKewen, Lawless, Cutler, Goman, McElroy, Miles, Johnson, Ward and Clark.

The indictment against these defendants, charged in the substance that they together with other persons, to the number of 227, being workmen and Journeymen in the art and mystery of weavers, and unlawfully intending to oppress, aggrieve and impoverish one Richard Whiteworth, being a master employing such workmen as aforesaid, did combine and conspire amongst themselves, that they would not work for the said Whiteworth, and that to carry said combination into effect, they unlawfully assembled at a place therein mentioned, and then and there agreed amongst themselves, and resolved and swore that none of them after the 5th of March, 1829, would work for said Whiteworth in said art and trade.

Upon the trial it appeared that Whiteworth, the prosecutor, was a master-weaver employing a number of workmen and journeymen in the conduct of his trade, whose wages were paid wholly in cash, that this mode was not general in the trade, in some instances, the wages being paid partly in merchandize; and that by the testimony of several master workmen, the wages



which were paid by Whiteworth at the time when the alleged conspiracy was entered into, were not only less than those which were paid by such master workmen, as paid only part in cash, but also less than were paid by several who paid wholly in cash, as the prosecutor himself did. In the latter part of February last, the prosecutor came to the determination to make a still further reduction in the wages of his workmen, and when this determination was announced to them, they assembled and adopted the resolve not to work for him at the reduced rates. At the same time it was agreed amongst them, that if the reduction of the wages offered by the Prosecutor, became general in the trade, they would resume their employment with him at such reduced rates. To obtain the opinion of the trade upon the propriety of the reduction, a meeting was called for the fifth of March last; to which the Prosecutor was invited, and to attend which, a very general invitation appears to have been given to the principal master weavers in this city and through them to their journeymen! The meeting took place on the evening appointed, at which there was a very full attendance, and the prosecutor and the defendants on trial were present. The meeting was organized by the appointment of a Chairman and Secretary, and after such organization the prosecutor was called upon on behalf of the meeting and earnestly requested to retract his determination as to the reduction of wages. The consequences of such a reduction to the trade in general, and more especially to those in his employ (who represented that they were unable to procure a subsistence for themselves and their families out of the wages proposed by him,) were fully developed and enforced on the part of the meeting. But all efforts to change his purposes proved unavailing, and he retired from

the meeting reiterating his determination to adhere to the reduction which he had made, and to break down what he termed Wm. Knox's Store Pay. After his withdrawal it appeared that a solemn resolve was entered into by the greater part, if not all the workmen present, never to work for him again, nor for his son, who was a minor and in his Father's employ, for the space of two years. This resolution was accompanied by an oath to that effect, which did not appear to have been administered by any member of the meeting, but was voluntarily taken by each person, party to the resolve, by self administration of it, and not at the instance or upon the summons of any other member of the meeting. On the next day the resolve was published in one of the newspapers of this city, attested by the Chairman, and has since been adhered to by the defendants, and all others joining in the resolution. It appeared that the whole proceeding was voluntary, that no efforts were made on behalf of the meeting by threats or otherwise to compel into submission to the resolve, such as were unwilling to participate in it or extend it to those who were not present at the meeting, and that several retired from the meeting without joining in it and without molestation. It was also the opinion of such of the master weavers as were examined upon the trial, that the reduction of wages, proposed by the prosecutor, was not only injurious to the workmen themselves, but also to the Master Weavers. They considered that the reduction by him would ultimately compel like reduction on their part; and that this reduction would produce a depreciation in the value of their goods, which would prove prejudicial in producing a like depreciation in the value of the goods on hand, which were manufactured at the higher prices.

The case was argued for the State by the deputy

attorney general, and on behalf of the defendants, by D. Stuart and J. V. L. McMahon. After the argument of the latter was closed.

The counsel for the state were about to reply, when the court stopped the prosecution. The law and fact had both been submitted to the jury by the counsel for the defendants, yet they deemed it proper to express their opinion. The case appeared to be one of agreement on all sides. Each understood the purpose of the other. The master was unwilling to give the old wages and had dismissed these defendants from his employ, and they in their turn had resolved never to work for him. Each had a perfect right to do this. There might be cases of agreement to omit acts which would constitute conspiracies, but they were omissions of a duty. They were not disposed to disturb the decision of the Court of Appeals, but in their opinion this case fell without all the cases cited by that court. The administration of the oath was exceedingly improper, yet it did not change the aspect of the crime as a mere conspiracy. And under this opinion the jury returned a verdict of Not Guilty to the Defendants.

## VIII. CHAMBERSBURG SHOEMAKERS, 1829

From the Philadelphia *National Gazette*, Nov. 19, 1829.

Chambersburg [Pa.], Nov. 17.

The Court of Quarter Sessions of this county, were occupied between three and four days last week, trying an indictment against sundry Journeymen Shoemakers of this borough, for a conspiracy to raise their wages, and prejudice such as were not members of their association. The written Constitution and By-laws of the Society were in general of a benevolent character, providing for the support and comfort of its sick and disabled members. The prosecution was in the main sustained by proof of other rules that were unwritten but acknowledged and practised by the Society. The Jury after being out from Friday evening to Saturday forenoon, found the Society guilty of conspiring to raise their wages – and on the afternoon of that [day] the Court sentenced the principal of the Society to pay a fine of ten dollars – three others named in the indictment, each a fine of five dollars, and costs of prosecution.





IX. GENEVA SHOEMAKERS, 1835:  
PEOPLE *V.* FISHER *ET AL.*

In the Supreme Court of New York, 1835

Reported in 14 Wendell's *Reports*, 10

[See Preface, vol iii, 16.]



X. HUDSON SHOEMAKERS, NEW YORK,  
1836: PEOPLE *v.* COOPER

Reported by W. Hunt, Counsel for the Defence, and John W. Edmonds, Esq.,  
and Ambrose L. Jordan, Esq., for the People.

[Title page] TRIAL OF JONATHAN H. COOPER, KINNETH DEFRIES, FREDERICK BRUSH, ROBERT B. LAWTON, ELISHA BABCOCK, HERMAN STODDARD, JOHN MARCELLUS, AND SIDNEY WANDLE; JOURNEYMEN SHOEMAKERS OF THE CITY OF HUDSON for an alleged Combination & Conspiracy, &c. before Judges, Wilcoxson, Bull, Patterson, Butler, and Miller, at the Court of General Sessions, Hudson, N.Y. Tuesday, June 28, 1836. Reported for the Cordwainers Society, by W. Hunt, Counsel for the Defence, John W. Edmonds, Esq. and Ambrose L. Jordan, Esq. for the People. J. Sutherland, Jr. District Attorney, and H. Hogeboom, Esq. Where Twelve Patriotic Jurymen set aside by their verdict, the decision of Chief Justice Savage, thus rescuing the rights of the Mechanics from the grasp of Tyranny and Oppression. Copy right secured. [3] Hudson, Tuesday June 28, 1836.

COURT OF GENERAL SESSIONS. The People, *vs.* Jonathan H. Cooper, Kenneth Defries, Frederick Brush, Robert B. Lawton, Elisha Babcock, Herman Stoddard, John Marcellus, and Sidney Wandle.

Messrs. Sutherland and Hogeboom, for the prosecution, and John W. Edmonds, Esq. assisted by Ambrose L. Jordan, Esq. for the defence.

The defendants were indicted under the statute for a combination and conspiracy to raise their wages, &c.,



to "the great injury of trade and commerce." They were indicted at the instance of Eli Mosier, a boss shoemaker, of the city of Hudson.

There were two counts in the indictment, which are as follows:

The first count charges, "that the defendants, not being content to work for the usual prices, but combining to increase their wages, and the wages of other journeymen, and to extort great sums of money for their labor, did, on the 15th September, 1835, combine together with other workmen, and agree that none of them, would after that day, work at any lower prices than those mentioned in the list, to the great damage of the boss shoemakers, and the injury of trade and commerce, and against the statute."

The second count charges, "that the defendants, on the 15th of September, 1835, being journeymen shoemakers, and not content to work at the usual rates, but combining to increase the wages of themselves and other journeymen, and to extort great sums for their work, did on that day assemble together and form the society of 'United Society of the Journeymen Cordwainers of the City of Hudson,' and did thereby agree, that no member of that society, after the said 15th of September, should work for less than the rates agreed on; nor for any boss who should employ any one who was not a member of their society, or who should work for less than their rates. That any member who should work for less, should be expelled from the society and not be restored a member until he paid his fine, and ceased to work for lower wages. That any boss who should refuse to pay their rates of wages should be fined, and no member of the society should work for him until he paid his fine. And that in pursuance of

such agreement, the Defendants, and the other conspirators, did on the 15th of September refuse to work for Eli Mosier, Nicholas Kittle, George Algar, and Solomon Shattock, or any of them, they being boss shoemakers, at or for lower [4] rates than above mentioned; and for no other reason than that 'they employed journeymen not being members of their society, who did work for less than the regular rates of wages,' and that they put a fine of \$25 on Mosier and refused to work for him until he paid it; to the great injury of trade and commerce, and against the statute, &c. &c."

The following Jurors were sworn: Names of Jurors, and their occupation – Uriah Edwards, *merchant*; John M. Blunt, *farmer*; Herman Dewey, *do.*; Herman H. Rouse, *do.*; Elisha Lord, *do.*; Henry J. W. Snyder, *do.*; John I. Shufelt, *do.*; David Proseus, *do.*; Casparus P. Lampman, *do.*; R. T. Greene, *boss shoemaker*; John Pulver, *farmer*; Andrew Miller, *do.*

The Indictment having been read, Mr. Sutherland, the District Attorney, in addressing the jury proceeded to expatiate on the nature of the offence, with which the defendants were charged. He observed that the offence against the law consists alone in the conspiracy. The crime did not consist in asking for an increase of wages; that they had a right to do, but they had not a right to meet together and to fix those prices by combination – they had no right to say that boss shoemakers should not employ men not belonging to their society. The tendency of these societies was to restrain the free circulation of wealth through the country, and the powerful arm of the law had a right to put them down before the land was swelling with the injuries resulting from them. He thought he could show that there was a link connecting this with other so-

cieties, and that there was a mutual understanding between them, and it was for the interests of labor that they should be put down.

Witnesses were then called for the prosecution.

JOHN WYGANT, sworn. I am a journeyman shoemaker of this city. I came here last fall. I have worked at the shoemaking business since that time. I cannot say at what time the "Society of Journeymen Cordwainers of the city of Hudson" was formed. It was formed during my absence. I think it was in the fall of last year. I became a member. At the time I joined, the defendants were members of the society. I think there were about thirty or thirty-five members. I am not now a member. I left it voluntarily. I was not present at the formation of the society. I was given to understand it was for the encouragement of trade. They were not to interfere with each other, and one was not to work for less than the others were getting. There were officers in the society. There were a president, vice president, a secretary, treasurer and committee men. Cooper was president—Lawton, secretary—Stoddard, treasurer, and Brush and Babcock were part of the committee. I understood the business of the committee was to visit the [5] shops round, to see that all was right, and to attend to the concerns of the society.

To Mr. Edmonds. I thought that when a journeyman went to work for a boss who did not give the wages, it was the business of the committee to inform him of it.

To the Court. When I say wages, I refer to the wages on the list. (Here a list was shown to the witness.)

Direct. I believe this was a list of prices established

by the society. I think I can recognize it by the heading of it. I saw a good many of the lists of prices round the shops. I do not know who took them round. The members agreed not to work for less than the rates established by the society. If any member worked for less he was ejected from the society unless he could settle it satisfactorily, either by fine or other method, or by an acknowledgment. I understood that it was agreed that no member should work for a boss who employed men who were not members. If the boss refused to give the price, the journeymen belonging to the society would not work for him. If a boss refused to pay the fine, I could not say what would be done in that case. It all depended on the majority of the society. I understood that the society had fined one boss who would not pay the price.

To the Court. It was left discretionary with the society in such cases to pursue what course they thought proper.

Direct. There was no established rule on the subject. There was something which was called a Constitution and By Laws, but I do not recollect what they were. The law of the society was, in case a man would not join, to discountenance him, and to hold no intercourse with him. Such members of the society who did not obey the rules, or worked under price were fined. It was an understanding between them that no intercourse was to be had with the journeymen who were not members of the society – they were to be discountenanced. I was present when Mr. Shattock was fined one Dollar for refusing to pay the established rates. He is a boss shoemaker, and is not a member of the society. There was a committee appointed to wait on him at the time. I understood that they waited



on him and reported to the society that he would pay the fine. At this time, to my knowledge, there was no agreement made, and no measure proposed in case he should not pay it. There were members of the society working for Mr. Shattock at the time. There were other fines imposed while I was a member of the society. There was one imposed on Mr. Mosier for \$25.00. I understood the fine was imposed because Mr. Mosier did not comply with the rules of the society, and refused to give the wages.

To Mr. Edmonds. I was not present when the society was formed. I understood that the list of prices was agreed on between the bosses and journeymen. I understood that the list was not drawn out until after the society had been formed. [6] At the time I came to Hudson, I understood that some of the bosses did not pay the price.

I do not know that any measures were taken by the society to compel him to pay it. When the members left Mosier, previous to the fine being imposed, I think it was when the deep snow was on the ground. I understood that up to that time, Mosier was paying the rates of the society. I was a member of the society at the time that the fine was imposed on Mosier.

The District Attorney, here objected to the defendants proving the reasons for imposing the fine.

Mr. Edmonds replied, that he intended to prove that Mosier refused to pay the wages in the depth of winter, taking advantage of the necessities of the journeymen at such a severe time, and to show that the fine imposed, was for cruel treatment also. Mosier himself had formed a cruel conspiracy against the journeymen, by going round to the other bosses and instigating them not to give the prices.

Mr. Jordan observed, that he understood that all the District Attorney intended to prove, was the imposition of the fine, but he had proved something more. He had proved that the fine was imposed because he refused to pay the rates of wages, and should not the counsel for the defence be allowed to show all the cause of the fine? to show that Mosier reduced the wages so low that it was impossible for men to live. If it could be shown that the society fined him because he acted oppressively, it would vary the case materially.

Mr. Edmonds submitted that the second count in the indictment says that they refused to work for Mosier because he employed journeymen who were not members of the society, who worked for less than the usual rates, whereas, if they could show that it was oppression which caused them to leave, and that they were justified in refusing to work for him, would not this negative the clause in the indictment?

Here a discussion took place between the opposing counsel.

The court decided that the other reasons could not be shown, but the one already mentioned should be struck out of the testimony.

NICHOLAS RANSOM, sworn. I am a journeyman shoemaker. I am foreman in the shop of Mosier. I have been there about a year and a half. I know Elisha Babcock. He was at our shop. He came last winter, and has worked for Mosier. He afterwards left because Mosier refused to pay the rate of prices. I understood from Mr. Babcock, that he belonged to the society. I have seen two lists of prices printed. Babcock, Nelson, Randall and others, were members of the society who left Mosier. The only reason they assigned for leaving was his refusal to pay the prices.

One of the lists of prices was left at the shop and handed to Cooper and Babcock by the printer. At the time they were handed in I do not know whether the new prices were paid or not. I think we had been paying something [7] less. The rates on the handbill were different from the rates they were then paying. Before the bills were printed, a committee had waited on Mosier, and had asked him if he would pay the rates. He said he would. The committee did not tell him what they would do in case he did not pay it. Mosier paid the rates for all he had made. At the time that Babcock and others left, it was in the winter.

To Mr. Edmonds. I cannot say whether or not the society was formed at the time the committee waited on Mosier. Babcock quit before the fine was imposed. I did not hear him say any thing about imposing the fine. I have frequently heard him converse about the fine afterwards. He asked me on one occasion, "if the old man would pay the fine or not," and added, "that he would not get a journeyman until he paid it." I do not recollect what time in the fall the rate of wages was adopted. After the committee had called on Mosier, he continued to give their price until winter. Mosier then instructed me to tell the journeymen "that after that period he could not afford to give the prices, nor any more than the old rates." It was in consequence of this information that Babcock and the others left Mosier on that day. (Here a list was shown to witness.) I believe this list of prices is the same as that handed into the shop after the journeymen had left. It was a day or two after, and in the evening. This was the list agreed on and adopted by the employers, and was lower in some respects than the list of prices adopted by the journeymen.

Mr. E. observed, that this was a list of prices adopted by the employers of Hudson, and this was their conspiracy.

Ev. resumed. To Mr. Edmonds. When the men left Mosier, it was after the first deep snow had been on the ground. I do not think that Stoddard worked for Mosier at this time – Babcock worked there then. Babcock is the only one of the parties indicted, who worked for Mosier at that time. Babcock is a man of family.

(Here a recess of an hour was granted.)

After the recess, the examination of the last witness was resumed by the counsel for the prosecution, who asked him, "If he had heard the defendants say that they belonged to the Trades Union Society."

Mr. Edmonds objected to all such questions as totally irrelevant to the subject.

The District Attorney observed that the fact of the combination of this individual society in the city of Hudson, was scarcely an evil of itself, but if he could show that it was connected with a hundred other societies, and that it was a child of a parent, the Trades Union, extending throughout the United States – the evil would be more formidable.

Mr. Edmonds objected to the procedure, as even admitting it could be proved that there was a connection between this [8] society and the Trades Union, it would not affect the present charge.

The District Attorney said he could prove that this society had been provided with funds from the Union.

This statement was denied by Mr. Edmonds.

Mr. Hogeboom said that the connection with other societies, showed a greater evil than that which affected this city, it was sending its bitter fruits through the



land, and should they be prevented from showing the magnitude of the evil?

Mr. Jordan remarked, that the fact of the defendants belonging to the Trades Union Society, even if it could be ascertained, would prove no more than if they belonged to the Methodist Society, and he averred that there was no harm in belonging to the Trades Union, unless it could be proved that the Trades Union Society was an evil.

The Court decided that the evidence tending to prove the connection of the defendants with Trades Union, could not be admitted.

THOMAS LOGAN, sworn. I am a journeyman shoemaker. I came to Hudson some months since from Catskill. I came here for employment. I applied to Mosier to get work. He offered to give me work. I saw some of the members of the Cordwainers Society in this city. They were strangers to me. I did not work for Mosier. I saw several journeymen shoemakers from whom I got money, with which I went out of town. They did not give me the money on purpose to go out of town with. It was about a dollar. I then went away to Claverack. I went through Mr. Decker's shop when I was in Hudson. It was from some of the men at work for him that I got the dollar.

To Mr. Edmonds. I represented to the men who gave me the dollar that I was entirely destitute, and that was the only reason they gave me the money. I told them that I wished to go out of town. I do not recollect telling them the reason I could not get work - I told them I did not want to disturb the society.

J. WYGANT, re-examined. In February last the journeymen at work for Decker, belonged to the Cordwainers Society of this city.

MR. LOGAN, recalled. I do not recollect what the journeymen who worked for Decker, said to me. I remained in the town about two days and a half. I then went to Claverack—I work there now. The reason I did not work for Mosier was, I did not wish to make any disturbance in the society. I was told that he was a scabbed boss.

MR. WYGANT, recalled. I have heard the word “scab” used when a boss was fined for not paying wages. A scab was said to be on the shop until the fine was paid.

Here the witness was asked by the District Attorney, if he was afraid of the members of the society.

[9] MR. EDMONDS. And suppose he is afraid! Are we to be responsible for a man’s being a coward?

SOLOMON SHATTOCK, sworn. I am a boss shoemaker. Several of the members of the society worked for me last fall. Some of them left my employ because I would not give them the wages on their list. None but Defries left the first time—the rest did not leave until afterwards. Several members of the society called on me and asked me if I would give the wages, I told them I would willingly give them the same prices as the rest. They said that if I did not pay the fine they would leave me. I told them that if I considered it right I would pay it—but I did not pay it. I understood that the fine was \$5 at first, but that it was afterwards reduced to \$1. At the time Defries left me, I was paying the prices on their list to him—but in consequence of my not giving the full price to the other men Defries left me. At this time I had not been giving less than I had been used to, but I found I could not afford it and I reduced the price.

N. KITTLE, sworn. I am a boss shoemaker—Brush

and others called on me and told me that the men I was employing did not belong to the society and were working under price, and that therefore I must sack them – I told them I would not do it – they threatened to scab me for 6 months if I did not. The persons who came to me were a committee from the society.

S. SHATTOCK, recalled. I lost custom on account of the scab being upon me. I should not have lost it if I had paid the price.

MR. RANSOM, recalled. Mosier found difficulty in getting hands. This was not because he would not give the price, but because he refused to pay the fine. I told the committee that Mr. Mosier was not only willing to pay the price, but that he would give six-pence more.

To Mr. Edmonds. I was authorised by Mr. Mosier to offer the whole price and six pence more. I told this to the committee.

The defendants offered no testimony, and the testimony here closed.

Mr. Edmonds summed up for the defendants.

The District Attorney summed up for the People.

#### [10] MR. EDMOND'S SPEECH

(Of his remarks we can give only an imperfect sketch – we have caught the burden of the argument, but the rapidity of his language at times, when he became animated and warmed with his subject, prevented our catching more than the substance of his remarks. His illustrations of his argument, and his appeals to the sympathy of the jury, we entirely failed to get.)

The Counsel commenced by stating to the Jury the precise nature of the charge contained in the indictment, and then commented upon the evidence, as it bore upon that charge, contending that nothing had

been proved against the defendants, except that they had formed an agreement among themselves, and with others, that they would not work at less than certain rates of wages, nor for any one, who refused to pay those rates, and that they had carried that agreement into effect by refusing on certain occasions to work for certain employers: and the question presented to the Jury, he said, was whether such conduct was criminal.

The District Attorney having stated that he rested for the conviction of the defendants, upon the opinion of the Supreme Court, in the celebrated case of the People *vs.* Fisher and others, the counsel said it would be necessary for him, particularly to examine that case. Before entering upon that examination however, he would remind the jury, that in this case, they were judges of the law and the facts – that in civil cases they were to pass upon the facts only, and were bound to take the law as the Court laid it down to them; but that on the trial of indictments, they were themselves to judge what was the law of the case, and whatever opinion the Court might express to them, they could not relieve their consciences by resting upon that opinion – they could not avoid the responsibility which their oaths imposed upon them of deciding the whole case and the law which should govern it.

Having premised this, the counsel then read to the jury the decision of the Supreme Court in Fisher's case, and remarked, that his principal effort would be to convince the Court and Jury, that that was not the law of the land. He begged, however, that he might not be understood as intending the slightest disrespect to the Judge who delivered that opinion. He had been associated with him in the highest Court in the State. He was acquainted with his public and private char-



acter, and he was free to express his opinion, that there was no individual in the State, who from his private worth and public conduct had stronger claim upon the affection and confidence of the whole community, than the Chief Justice of the Supreme Court. But he did not mean to admit that that high functionary could not [11] err; for to err was human, and no man had ever yet lived who was exempt from this common fate. All Courts have found, from this infirmity of our nature, frequent cause to correct their own errors or misapprehensions.

The Counsel then mentioned to the Jury, and read from the books several cases in which our courts had at different times, reversed their own decisions, or in which they frankly acknowledged that they had been misapprehended or mistaken, and he quoted the remark of Chancellor Kent, (in his *Commentaries*, vol 1, p. 477,)

“That there are one thousand cases to be pointed out in English and American books of reports, which have been overruled, doubted, or limited in their application. It is probable that the records of many of the courts in this country are replete with hasty and crude decisions; and such cases ought to be examined without fear and revised without reluctance, rather than to have the character of our law impaired, and the beauty and harmony of our system destroyed by the perpetuity of error.”

The Counsel said he should examine the decision in question, certainly with the respect due to the tribunal from which it emanated, but with that fearlessness and freedom, which the importance of the case and his duty to his clients required of him. He anticipated that the District Attorney, and perhaps the Court,

would say that that opinion was the law of the case and they were bound by it, but he insisted that if he should be able to convince the Jury that this was one of those cases which the character of our law and the beauty and harmony of the system required should be revised, that they would obey the dictates of their own consciences, and without reluctance declare it so.

Gentlemen, said the Counsel, it is not one case alone which makes the law. We must adhere to adjudged cases, "when they have been so clearly and so often or so long established as to create a practical rule." (1 Kent's *Commentaries*, 478.) We are not otherwise implicitly bound by them, unless they are fully sanctioned by legal principles and justified by good sense. Even those principles are not immutable. The progress of society, the change of manners and the fluctuations of opinion are causing constant changes in our system of jurisprudence and when a relict of former ages is revived for the government of the present times, we must beware that it does not come to us tinged by some of that oppression which we have been taught it is virtuous and patriotic to resist. Upon no subject, have these fluctuations been greater, perhaps, than on the doctrine of conspiracy. Blackstone, 4 vol. 136, treats only of a combination to indict an innocent man of felony, falsely and maliciously. And such was the English Statute of 33 Edward I., but it has travelled on, in the courts, extending its grasp, until, in the language of the Chief Justice and the case he cites, a conspiracy of any kind is illegal, though the matter about which they conspired might have been lawful for them or any of them to do!

Examine carefully, gentlemen, the language of the Supreme Court. You will observe that they cite English

cases to show [12] what the common law is – to establish the position I have just stated, and that the “journeymen may each singly refuse to work unless they receive an advance of wages, yet if they do so by preconcert or association, they may be punished for a conspiracy” – and that “it is not for the denial to work but for the conspiracy, they were indicted.” You will observe also that the Court admit the right of the journeymen to get an advance of wages and their right to refuse to work for less. The end in view, viz: an advance of wages and the means of attaining it, viz: by refusing to work, are both lawful. Yet it is the combination which is the offence – it is the conspiracy for which they may be indicted. What is this but saying in plain language that it is a criminal act – a conspiracy for men to combine together to attain a lawful end by lawful means? Can this be the law? Can plain men, of common sense, comprehend it? Why, even Chitty in his treatise on the criminal law (from which it is apparent the Supreme Court have taken both their positions and their authority) says, on the very page succeeding that from which their quotation is made, that “it is impossible to conceive a combination, as such to be illegal.” He says yet more, gentlemen. He says, (3 *Ch. Cr. Law* 1139,) “there are perhaps few things left so doubtful in the criminal law, as the point at which a combination of several persons in a common object becomes illegal.” But the Supreme Court do not seem to entertain any such doubts. For after stating the obnoxious principle, which I have just read to you, they say “such was the construction of the Common Law.” It was doubtless necessary, in order to establish the conclusion to which the Court ultimately arrived in Fisher’s case, that such

should be their understanding of the Common Law and that they should feel that that rule was binding upon them. It is the conspiracy which makes the offence, no matter though the end and the means both be lawful. It must be a conspiracy then for two or more to form a partnership, though the end be to make money and the means be a union of their funds or their labor! It must be a conspiracy to form an association to build a church, though the end be even praiseworthy and the means be the expenditure of their own money! "They may singly do it, but if they do it by preconcert or association, they may be punished for a conspiracy."

I see, gentlemen, that this view of the case shocks your understanding. But do I state the position unfairly? Judge for yourselves. I have given you the very language of the Supreme Court—I have read to you, the opinion—and I confess to you that after a most careful and anxious examination of it, I can give it no other construction. Let us however, test this matter. Let us examine the cases which the Supreme Court cite and see whether they do not, so far as they sustain the Court at all, sanction this view of their position. The examination will also enable us to determine, whether these cases, if they do sanction it, do truly lay down the law.

[13] I have already alluded to the reference made by the Supreme Court to Chitty's *Criminal Law*. After speaking of the uncertainty of the law, upon the subject of conspiracy, he says it is certain that there are many cases in which the act itself would not be cognizable by law if done by a single person, which become the subject of indictment when effected by several with a joint design. He instances the case of journeymen, combining to raise their wages, and says it is clear any



one of them may singly act on this determination, but it is criminal when it follows from a preconcerted plan. He says also, that in every case the offence depends on the illegal agreement. This surely supports the position of the Supreme Court and my view of it. But Mr. Chitty had no right to make the law, nor was that his attempt. He was stating it, as he supposed he found it in the books and his declaration has weight only so far, as it is sanctioned and sustained by the decisions which he cites.

Of the four cases which he relies upon, one (in 2d Ld. Raymond 1179) was the case of a cheat and the word conspiracy is not mentioned – one (in 6 East 133) was an information against an Attorney for falsely pretending that he had authority to commence a prosecution, for the purpose of extorting money; a third (in 4 Burr, *Rep.* 2106) was an information against one overseer of the poor, for procuring the marriage of a pauper, whereby he relieved his town from its support.

The counsel here read these cases to the jury and asked them whether it was not evident that they had nothing to do with the question before them? Yet they were relied upon as authority to sustain the position he was contending against.

But then there was one case cited both by Chitty and the Chief Justice which seemed to sustain them. He alluded to the case in 8 *Modern Reports*, 11. It was decided in the English Court of King's Bench, in November, 1721 and is reported as follows:

“One Wise and several other Journeymen Tailors of or in the town of Cambridge were indicted for a conspiracy among themselves to raise their wages: and were found guilty. It was moved in arrest of Judgment upon several errors in the record.”

The first and second points raised relate to other subjects, the third bears upon this question and is stated in the following words. It was objected,

“Thirdly – No crime appears upon the face of this indictment for it only charges them with a conspiracy and refusal to work at so much *per diem*, whereas they are not obliged to work at all by the day, but by the year, by 5 Eliz. C. 4.

“It was answered, that the refusal to work was not the crime, but the conspiracy to raise the wages.

“The Court. The indictment, it is true, sets forth that the defendants refused to work under the wages which they demanded: but although these might be more than is directed by the Statute, yet it is not for the refusing to work, but for conspiring that they are indicted, and a conspiracy of any kind is illegal, although the matter about which they conspired might have been lawful for them, or any of them, to do, if they had not conspired to do it.”

[14] Now the question is, is this decision law – is it of binding authority – will it justify the revival of this doctrine at this day? The same legal luminary, whom I have already quoted, Chancellor Kent – in the 1st. vol. of his *Commentaries*, pages 478, 9 – says, the Reports “have the force of law, when there has been a series of uniform decisions on the same point,” and that no one ought to “read a book (and the remark has peculiar application to law books) unless he knows something of the author and when he wrote and the character of the work and the character of the edition.”

Who was the author of the books called “Modern Reports,” is yet a mystery. No name appears upon their face. They are anonymous. The preface to the second edition of this 8th vol. has this strong language:

"The Editor having been favored with a sight of many marginal notes, and corrections made soon after this book was published by a gentleman then at the Bar, for his own private use, and founded upon contemporary notes of the cases therein contained, and judging from such marginal notes and corrections, 'that the book must have been exceedingly imperfect and erroneous,' has done his best endeavors to supply the defects of the former wretched edition."

Its exceeding errors are apparent upon its face and are frequently pointed out by the editor in the progress of the work. The same volume, which the Chief Justice quotes, contains on page 321, a decision of the same Court that a conspiracy to do a lawful act to an unlawful end is the crime. This is directly at war with the case on page 11, as understood by the Chief Justice. The book has frequently been condemned by the English Judges, and by our own. In the time of Lord Mansfield, it was particularly so. In 1 Burrows, *Rep.* 386, when 8 *Modern* is cited it is called "a miserably bad book." In 3 Burr 1326, when 8 *Modern* was again cited, it is said "the Court treated that book with the contempt it deserves." Yet this book, thus condemned, and bearing all this load of obloquy, is the only foundation on which rests the opinion that is to condemn the defendants in this case!

But gentlemen this is not all. We must look to the time "when the author wrote" and see whether his book and the decisions which he pretends to give, do not bear marks of an age which we must abhor, for its corrupt and persecuting spirit. This decision was made in the 8th year of the reign of George I and history tells us, that he was imported from a foreign land to rule over the English people – that he had no

sympathy with their feelings and scarcely any knowledge of their language. Rebellion reared its head and the blood of the people flowed freely in the field and on the scaffold – Vice and immorality began to be diffused through every rank of life. The highest judicial officer of the nation, was impeached for corruption and set up for his only defence that others had done so too. The King threw himself into the arms of a faction – laws were passed by which all meetings of the people either for amusement or redress were rendered criminal, if it should please [15] any magistrate to consider them as such, and Goldsmith tells us, in his 4th vol., page 175, that those in power “oppressed whom they would – bound the lower orders of the people with severe laws and kept them at a distance by vile distinctions and then taught them to call this – liberty!” Nay more, at this very time, statutes existed prohibiting journeymen from receiving more than 2 shillings a day for their work – in 1720, only the year preceding this decision – a law was enacted prohibiting them from entering into any contract for advancing their wages. The violation of this law was rendered criminal by previous statutes – on their trial they were denied the assistance of counsel and on conviction were subject to the “villainous judgment” of being disabled from being put upon any jury, to be sworn as witnesses, or to appear in person in any of the courts, their lands and goods were to be forfeited and their bodies committed to prison! For demanding a fair compensation for their labor, the punishment of a criminal was to be inflicted upon them and poverty and utter ruin upon their families!

Can it be wonderful that at such a time and in such an age, a court could be found – more especially when



it had been increased in number by the King, in order to give his adherents a controlling power – that would hesitate in pronouncing such a judgment, as that which the Supreme Court has cited? No, gentlemen, that is not the wonder. Our wonder is that our courts, can search in such an age, for a rule to govern the people of the present time, when they are not compelled, as in those days, to surrender freedom for safety. Why revive only a part of this bye-gone oppression? If we are to have any of it, let us have it all, that the laboring classes may know at once, how deep is the degradation – how inexorable the oppression, to which they are to be doomed. And may you not, on the same principle, revive the whole of that law? You will find it sustained by English books and English decisions. The only difference is, that all of its parts have not yet received the sanction of our own courts. Are you, gentlemen, prepared to seek for the laws of your land, in such a field – to permit its streams to flow from such a polluted fountain?

But I have not yet done with the case in 8 *Modern*. You will remember that it is cited to show that any conspiracy is illegal though the matter of the conspiracy might have been lawful, and that this principle is necessary to sustain the decision of the Supreme Court, that the conspiracy in Fisher's case, was unlawful, though the matter about which they conspired, viz: the raising of their wages was admitted by that court to be lawful. Now, gentlemen, you will probably be surprised to learn, that the case in 8 *Modern* does not decide that a conspiracy for a lawful end is criminal. The raising of wages which is admitted to be lawful with us, was unlawful [16] in England. And after all, that decision which declares the combination criminal

because the raising of wages was unlawful, has been erroneously viewed by our court, as a decision that the combination was criminal, although the raising of wages was lawful! I give you, gentlemen, the residue of that case, so that you may judge for yourselves, whether my conception of it is accurate. The fifth point, with the arguments of counsel and the decision of the court is in the following words:

“Fifthly – This indictment ought to conclude *contra formam Statuti*; for by the late statute 7 Geo. I. C. 13 Journeymen Tailors are prohibited to enter into any contract or agreement for advancing their wages, &c. And the statute of 2 and 3 Edw. 6 C. 15 makes such persons criminal.”

“It was answered, that the omission in not concluding this indictment *contra formam Statuti* is not material, because it is for a conspiracy which is an offence at common law. It is true the indictment sets forth, that the defendants refused to work under such rates, which were more than enjoined by the Statute, for that is only two shillings a day; but yet these words will not bring the offence, for which the defendants are indicted, to be within that Statute, because it is not the denial to work, except for more wages than is allowed by the Statute; but it is for a conspiracy to raise their wages, for which these defendants are indicted: It is true, it does not appear by the record that the wages demanded were excessive; but that is not material, because it may be given in evidence.”

“The Court. This indictment need not conclude, *contra formam Statuti*, because it is for a conspiracy, which is an offence at common law.”

“So the judgment was confirmed by the whole court *quod sapiantur*.”

Now, if my apprehension of this case is correct, what becomes of the decision of our court? It rests solely as I shall show you upon this case in 8 *Modern* and you will observe this marked distinction between the cases that in one the end in view was lawful and in the other unlawful. How can the decision in one be an authority for the other? And do you not plainly see that the English rule has grown entirely out of the English statutes which fixed the prices of labor and rendered it unlawful for the workmen to attempt to raise it?

I suppose the true definition of a conspiracy to be this, that it must be a combination of two or more, to obtain an unlawful end by lawful means or a lawful end by unlawful means. This is the construction given by our Court of Errors in the case of Lambert, in 9 Cowen 678, and whatever doubts may be left, as the Supreme Court suggests, upon other points in that case, upon the point which I have now stated, not a shade of doubt remains, for every member of that court, agreed upon this principle. What then, I ask again, becomes of the decision of the Supreme Court? The Court of Errors, to which you know, the Supreme Court is subordinate, have solemnly decided that to constitute a conspiracy either the end or the means must be unlawful, but the Supreme Court declare a conspiracy to consist in itself – in the very fact of combination – notwithstanding the end and the means are both lawful. Which of these cases can you consider as most controlling with you? Which is the soundest exposition of the law? By and bye the District Attorney will tell you that you are [17] bound by the decision of the Supreme Court and must expound the law, as it is there laid down to you. May I not reply

that the obligation of obeying the Court of Errors is still stronger upon you? All I ask of you, is if you have doubts upon this disputed point, to decide it according to the dictates of your own good sense and honest hearts.

I have said that the decision in 8 *Modern*, is the sole ground on which the decision of the Supreme Court rests. I will show this to you in a few words. Chitty is cited, but he rests upon the same case and his remark must have weight only so far as he is sustained by his authority. 6, *Term Reports* 636, is the only other case, which the Supreme Court cites and it will not require many words to show you the extent of its authority.

In the first place, it was a decision in 1796, after the formation of our Constitution and after the period, the 19th April, 1775, which that Constitution fixed at the time, beyond which the English Courts should cease to manufacture law for us.

In the second place, it does not decide the point which the Supreme Court supposes it to do. That was an indictment against some magistrates, for giving a false certificate as to the state of a public highway, and the question in the case was, whether that certificate, being voluntary, and not required of them, by their official duties, they were indictable. It is true, that one of the Judges, (for all four of them delivered opinions) in his opinion, by way of illustration, makes the remark which the Chief Justice quotes. But the point was not raised or decided in the case, and the remark was what we lawyers call an *obiter dictum* and entirely without authority. There is no rule with which we are more familiar than that which requires us to disregard such remarks. Chancellor Kent says,



(1 Kent's *Com.* 473,) and I confess to you, gentlemen, that I take peculiar pleasure in quoting the language of so pure and able a jurist – that “The expressions of every Judge must be taken with reference to the case on which he decides; we must look to the principle of the decision, and not to the manner in which the case is argued upon the bench, otherwise the law will be thrown into extreme confusion. The exercise of sound judgment is as necessary in the use, as diligence and learning are requisite in the pursuit of adjudged cases.” And I can cite to you frequent cases, in which our Supreme Court has applied this rule. One is at hand – it was the case of an appeal bond. One of the Judges, in illustrating some point, stated the effect of the bond. Shortly after, the distinct question came up before the Court, and the same judge gave a directly opposite construction to the same words and disregarded his former language, because it was *obiter dictum*. The District Attorney, if he should doubt my position, will find several cases of this kind, in our books. I will now refer him to the following only: 5 Cowen's *Rep.* 34 and 35. 7 Cowen 428. 4 Cowen 64. 1 Wendell 156.

But it may be said, that 6. *Term R.*, although after 1775, is [18] good as an illustration of what the Common Law was before that period. What then will be said of the case which I have found in 13 *East Reports* 228, which was decided by the same Court, 16 years after the case in 6 *T. R.*, in which it is expressly ruled that a conspiracy to do an unlawful thing is not criminal, and in which the case in 8 *Modern* is cited and disregarded by the Court? This case has evidently escaped the attention of our Supreme Court, yet it seems to me to be entitled to much more consideration at our hands, because it is an express decision upon a point raised, which the other is not.

I have now, gentlemen, examined with you all the English cases, which I can find that sustain the decision of the Sup. Court. You must have already discovered that I have bestowed no little attention on this subject. The magnitude of the question involved and its importance to, my clients rendered it imperatively necessary that I should go to the very foundation of the law which was to govern their case. I have therefore, searched with anxious care, and I believe I may say with entire confidence, that no case can be found to support this part of the opinion of the Sup. Court, other than those which I have exposed to your view.

If such is the fact, may I not appeal to your good sense to repudiate doctrines which are not well grounded in the law, which had their origin in a venal and oppressive age, and which cannot exist without impairing the character and destroying the beauty and harmony of our jurisprudence? Look at the consequences of your decision. If against the accused, you place them at the mercy of their employers – you forbid to them that union which alone can enable them to resist the oppressions of avarice – you condemn them to constant labor for such a pittance as others may choose – you refine upon even ancient cruelty. The time was, when the rate of wages was fixed by the Legislature or the local Magistrates, but you will commit it to those, whose interest it is to reduce it. You will condemn the journeyman to such incessant toil, merely for his daily bread, that you will deprive him of the means and the opportunity of learning the rights and duties which he is to exercise, as a citizen, for your welfare and mine, as much as for his own. How can you expect him to love the country, which does not afford him adequate protection? Remember that Government has no rights and the People no duties in-

consistent with each other. That their mutual welfare is involved in reciprocal protection and obedience. And while you are called upon as jurors to enforce the obedience due from the citizen, you are also bound to afford protection to him.

If, however, your decision should be in favor of the accused, you will repudiate this Common Law doctrine which has been so unnecessarily pressed into the cause of the prosecution. In this you will but imitate the conduct of the Legislature. You will leave trade to regulate itself by the mutual freedom from partial restraints of both the employer and his workmen. You will leave to one side, the same union which practically exists upon the [19] other, and you will restrain both, no farther than public, not private considerations will justify.

And this, gentlemen, leads me very naturally to the discussion of the only remaining point in this case, viz: whether the combination, proved against the accused, does or can effect public trade? Or in other words, whether it is a conspiracy under the statute?

Now, I can entertain no doubt that the Legislature intended to abrogate the doctrine of the Common Law, which the Supreme Court has cited as the basis of its decision. That doctrine is that the mere agreement constitutes the offence. The Chief Justice, in quoting the statute, does not allude to the 10th section, which is that "No agreement except to commit a felony upon the person of another, or to commit arson or burglary, shall be deemed a conspiracy, unless some act besides such agreement, be done to effect the object thereof, by one or more of the parties to such agreement."

Nor does he seem to have been aware of another provision of the Statute. 2. R. S. 735 §17. "In trials for conspiracy, in those cases where an overt act is

required by law to consummate the offence, no conviction shall be had, unless one or more overt acts be expressly alleged in the indictment, nor unless one or more of the acts so alleged be proved on the trial; but other overt acts not alleged in the indictment, may be given in evidence on the part of the prosecution."

These provisions are utterly inconsistent with the principles I have been impugning and the Legislature intended they should be so, for the Revisers introduce the 10th Sect. with the following remarks: "By a metaphysical train of reasoning, which has never been adopted in any other case in the whole criminal law, the offence of conspiracy is made to consist in the intent; in an act of the mind; and to prevent the shock to common sense, which such a proposition would be sure to produce, the formation of this intent by the interchange of thoughts, is made itself an overt act, done in pursuance of that interchange or agreement. Surely an opportunity for repentance should be allowed to all human beings; and he who has conspired to do a criminal act, should be encouraged to repent and abandon it. Acts and deeds are the subject of human laws: not thoughts and intents, unless accompanied by acts."

It is true the Supreme Court admit that the Common Law is abrogated, but is it not equally true, that without this Common Law rule it is impossible to convict the defendants for a conspiracy when they have done nothing unlawful, except to form an agreement among themselves?

It is very true their combination may effect the trade of Mosier or Shattock, but that is not an indictable offence. The Legislature refused to make it so, although the revisers recommended it.

The report of the revisers, recommended this clause,



in addition to the cases enumerated under the enactment, that "if two or more persons shall conspire either," &c. viz: "to defraud or injure any person in his trade or business." The Legislature struck out the provision and it is not now the law unless the decision of the Supreme Court in Fisher's case should make it so. If it was the law it would doubtless reach the case before you. To [20] justify a conviction the injury must be to the trade of the whole community. Although Mosier and Shattock may have sold less, yet other masters sold more. The same number were made and consumed. The defendants did not cease to work at all, though they left the employ of particular masters. If they had abandoned all work because they could not get their prices, then there would have been a subtraction of so much from the productive labor of the country. Still the question would remain, upon whom should the blame rest—upon him who refused to pay, or him who refused to work until he was paid? I cannot comprehend how an injury to the trade of one part and a corresponding benefit to another part, can operate to the injury of the whole. I can see the injury and its corresponding advantage, but I can see no subtraction from the sum total.

Nor can I see the great danger which some anticipate from these combinations—if the mechanic gets greater pay, I can see how we, who are not mechanics, have more to pay. We may become poorer, but he will be just so much the richer—yet I can see no diminution from the aggregate wealth of the community. It appears to me that the thing, if left alone, will regulate itself. If the journeymen tailors, by means of their combinations, get the prices of their work so high that we cannot afford to pay them, we shall not go without

clothes, we shall make them ourselves as you do now and for the same reason, because it is our interest to do so – nor will our whole city be without bread, because the journeymen bakers are extravagant in their demands. We will make it ourselves, as many of us do now. If they persist in their extravagance, they must either starve from their obstinacy – adopt some other calling or retrace their steps until they find the proper level with other things in the community. If the farmer raises the price of provisions, the mechanic will raise the price of his fabrics and thus the whole matter will regulate itself. The mischief is, when everything else is enhanced in value, that you will attempt to keep any one class down to old values and thus exclude them from a just participation in the general prosperity. This you cannot do, by positive enactments or judicial decisions without causing heart burnings and discontent. In our country the protection against such a partial operation of the laws, is to be found in our courts of justice and though the remedy may be delayed for a while, the good sense and true patriotism which pervade our whole community, render it ultimately certain.

(The counsel then proceeded to examine the facts in the case of Fisher and in the case of the Journeymen Tailors in New-York and to show the difference between those cases and the present, and occupied some time in applying the evidence to his previous arguments and principles. All this cannot be very interesting to the reader and our want of room compels us to omit it. He concluded in something like the following words:)

And now gentlemen I am enabled to say, I have done with this case. I will make no apology to you for

having occupied so much of your time. I have conceived the case to be one of no ordinary [21] magnitude, requiring of me the utmost effort of my feeble abilities. I have deemed it important, both as regards the public and the accused. I have viewed it as an incipient step toward depriving a portion of our citizens of their inalienable rights, and the more strenuously to be resisted because it assumes the false but imposing garb of legal authority. To the accused themselves it is of great consequence. They have no wealth to rely upon for support when their occupation shall be gone. They have no extensive and powerful connexions to crowd this room, and fill the public ear with prejudice against their adversaries. Humble and obscure – poor but laborious, they have been content to obey the primeval command of divinity and earn their bread by the sweat of their brow. Their offence has this extent and no more – that they endeavored to increase their means of support by obtaining only adequate compensation for their labor. They never dreamed that this could be otherwise than lawful. They could find no prohibition in our statute book. They had never searched for the Common Law among the musty records of antiquity. This wretched feature of the old system of oppression had not then been revived. In the dead of winter, and such a winter as the oldest among you have never known, they found themselves suddenly curtailed, by the avarice of their employers, of a portion of their means of support, and for resisting this attempt to take advantage of their necessities they are now arrayed as criminals at your bar! Most of them I have known long, and I know that the correct tenor of their lives has excited for their present condition, the strong sympathy of the

community. One of them, I have known from my boyhood, and I well remember the time when the accumulated force of poverty and disease was pressing him into the very dust of the earth. And if his family, which once suffered so acutely, are now placed above the fear of immediate want and enjoy some of the comforts, though none of the luxuries of life, they owe it to his rigid economy, his laborious industry, his strict morality. The time has been when his necessities compelled him to labor hard for the merest trifle. Little could he or I ever have supposed, that for the honest effort to obtain no more than a fair compensation for his industry, he would be arraigned and tried as a criminal. But accused though he is and on trial, not for the wealth of the Indies, though that wealth were to save him from actual suffering, would he exchange the consciousness of rectitude, which I know, at this moment swells his bosom, for all the satisfaction which the hard-hearted and selfish spirit which has instigated this prosecution, can enjoy, during a long life of avarice and suspicion. . . .

The District Attorney, then addressed the Jury on the part of the prosecution. He commenced by expressing his surprise that the gentleman for the defence should have arraigned the highest tribunal in the land, and endeavor to induce them to disregard the opinion of the Chief Justice. It was remarkable that the gentleman should require his Honor to charge the jury that the decision of the Supreme Court was not the law of the land. He spoke of the Supreme Court almost in the same spirit as the penny papers of New-York. And they all knew that things there had gone on to such a degree as to put at defiance the laws of the land,



and to call forth Proclamations from the highest executive authority. It would not be becoming in him to attempt to defend the decision of the Chief Justice. It was the opinion of the learned functionary that such combinations were injurious to the interests of trade and commerce, and who is more likely to be correct in the view of such a case than Judge Savage, who had made the law the business of his life. The learned gentlemen then proceeded to comment on the testimony and recapitulate the arguments of the Chief Justice, on the trial in question, and concluded by impressing on the minds of the jury the responsibility of their situation, and their imperative duty to find the defendants guilty if the evidence adduced was in their opinion sufficient to prove the facts alledged in the indictment.

[23] His Hon. Judge Wilcoxon then charged the Jury in substance as follows:

He took a review of the Statute under which the indictment was found, and observed that the indictment could only be made out under the 6th subdivision which declares it unlawful to commit any act injurious to trade and commerce. The cases at New-York and at Ontario County had been read to them, when it was shown that more violence was used than in the present case, and when compulsion had been used to prevent others from working who were not members of the societies. Heretofore all combinations of this nature have been deemed unlawful, and he could not but think that the gentlemen who were witnesses of this trial saw that it was a most serious combination. Here were a number of men in this city excluding their bosses and saying that if any man pursuing their avocation would not pay the wages, they

would not work for him, and that if any other person worked for him, they would discountenance, and have no intercourse with such person. Such proceedings struck home to the feelings, and caused dread even at New-York, where such outrages had been committed. From the testimony it appeared that a stranger had come into the city to seek for employment, but that he was induced to quit the city, rather than run the risk of incurring the displeasure of the society.

If they would confine their operations to themselves they would be less obnoxious, but they struck at the boss shoemakers to their loss as it had been shown in the evidence. But if their proceedings had not a tendency to injure trade, it was of no consequence what the amount of the loss was to the bosses, they ought not to be found guilty, but if it could be shown that the measures adopted by the defendants, and the course pursued by them were injurious to trade and commerce, then it would be the duty of the Jury to find them guilty. Reference had been made to the Supreme Court of New-York. He would explain the nature of that Court. It was composed of three Judges, whose duty it was to lay down and expound the laws. They had expounded this law, and in a case parallel with the one now before them, they had decided that it was a violation of the Statute. He did not know but that he had a right to advise them of the law, but it was their right and their duty to judge of the law, and if they thought that the reason assigned for the conviction of the defendants was not satisfactory, and were willing to assume the responsibility and to say that the Supreme Court were wrong, they had a right to do so.

If the journeymen shoemakers of the city of Hudson had a right to combine, then the Journeymen of other

countries had a right to combine and to control the labor of every mechanical State in the Union. The question for consideration was whether the controlling the labor of the country in this manner had a tendency to injure trade. For instance, in a manufacturing establishment where there were a hundred hands, and where contracts had to be performed in a given time, would not a sudden combination and refusal to work, cause the ruin of the individual? He might state other cases, but the case before them had been already so ably described that he should leave it with them without any further comment.

[24] The cause was then committed to the Jury, who were directed by the Court when they agreed, to seal their verdict and bring it into Court the next morning.

The Jury were together about 20 minutes, when they dispersed.

The next morning they delivered in Court the following verdict: The Jurors find the Prisoners Not Guilty.— URIAH EDWARDS, *Foreman*, RUSSELL T. GREENE, ELISHA LORD, HERMAN H. ROUSE, CASPARUS P. LAMPMAN, ANDREW MILLER, by his order, HERMAN DEWEY, DAVID PROSEUS, JOHN I. SHUFELT, J. M. BLUNT, JOHN PULVER, HENRY J. W. SNYDER.

XI. THOMPSONVILLE CARPET WEAVERS,  
1834-1836

THOMPSONVILLE CARPET MANUFACTURING COM-  
PANY *vs.* WILLIAM TAYLOR, EDWARD GOR-  
MAN, AND THOMAS NORTON, 1834, AND  
WILLIAM TAYLOR *vs.* THE  
THOMPSONVILLE MANU-  
FACTURING COM-  
PANY, 1836



These cases grew out of the same labor dispute. The first action was begun July 31, 1834. The first trial, which occurred in August, 1834, resulted in a verdict for defendants. Plaintiff appealed to the Superior Court where a second trial, held in September, 1834, resulted in a disagreement of the jury. The case was continued until January, 1836, when the trial reported here was had, resulting in a verdict for the defendants.

The case of *Taylor v. Thompsonville Carpet Manufacturing Company* grew out of *Thompsonville Carpet Manufacturing Company v. Taylor, et al.*, and was brought in October, 1834. The plaintiff alleges that the action by the Thompsonville Carpet Manufacturing Company against him and others was groundless and was brought to secure the arrest and imprisonment of the plaintiff, thereby intimidating him and compelling him to continue to work for the Company. The plaintiff states that on account of the unjust and excessive damages claimed in that action he was unable to procure bail and was imprisoned for twenty days. At the time of this case a defendant in a civil action who possessed no property subject to attachment could be arrested on the original writ. The Thompsonville Company demurred to the plaintiff's writ and declaration. The demurrer was overruled, after argument, at the November term, 1834. Defendant appealed to the Superior Court. The case was continued from time to time until Feb. 11, 1837, when it was, with two others like it against the same company, withdrawn.

These cases are omitted from this volume on account of limits of space. They will be published separately, as a supplement to this volume, and sent gratuitously to those who have already subscribed to the series.—EDS.

## XII. TWENTY JOURNEYMEN TAILORS, NEW YORK, 1836: PEOPLE *v.* FAULKNER

1. From the *New York Courier and Enquirer*, May 31, 1836

COURT OF OYER AND TERMINER. Before his honor Judge Edwards, and Aldermen Benson, Banks, Randall, and Ingraham.

The People *vs.* Henry Faulkner, Wm. Livingston, James Noe, Alexander Hume, Peter Moss, Joshua Bussey, George Smith, John Welsh, Daniel J. Gray, Thomas Keating, Thos. Renton, Howell Vail, John Bromberger, Stephen Norris, Jas. Magee, Alexander Douglass, John Dillon, James Skillig, Daniel Rose, and Thomas Douglass – (20).

The accused, who are journeymen tailors, and members of the Union Society of Journeymen Tailors, were indicted for a conspiracy to injure trade and commerce, and for riot, and assault and battery, &c.

From the mass of evidence adduced, it appeared that in the month of October last, the journeymen tailors belonging to the Society struck, as it is termed, for higher wages, and refused to work until their demands for higher rates were complied with. That this object attained, they resumed their labors, and continued to operate until some time in January last, when they again struck, and ceased to labor for those who had employed them. This strike was characterized by some features that had never before been presented to employers. One of these was, that the master workmen were each to keep a slate, and enter on it the names

of their journeymen as they successively took out their jobs; no one was to take a job out of his turn, and no one to have a second job until all had been supplied, &c. The journeymen, in the event of this proposition not being acceded to, were to refuse to work for those employers; who, on their parts, finding such an arrangement exceedingly troublesome and injurious, refused compliance, and their hands immediately left. In consequence of this non-conformance with these regulations, and others proposed, the parent Society adopted resolutions to carry out their purposes of coercion, and to compel the employers into a subserviency to their views.

Committees were appointed by them, consisting of eight or ten each in number, whose business it was made, under a penalty, to watch the shops of the master tailors; to see who went in and out with jobs; and to induce or persuade all journeymen working at the shops under the prohibition to abstain from working and join the Society; and in case of their refusal, to denounce them as unworthy of their friendship, to proscribe them in such a manner, that they could not get employment in regular shops, here or any where else, where there were Unions; to refuse even to work with them, or to work in any shop where they should be employed; and literally to hunt them from all tailors' society. This purpose, in January, was carried into full effect. All the regular shops were watched by squads of from 8 to 15, called committees, who paraded before the doors and windows from early in the morning to about 9 o'clock at night, often spreading their cloaks and coats before the windows to darken them, insulting, villifying, and applying the most opprobrious epithets to the journeymen who continued in

employ; dignifying them with the name "dungs," following and intercepting their movements when they went away with jobs, and threatening them with violence unless they struck, quit work and joined them. These acts of outrage and insult continued for nearly or quite 3 months before they were suspended, to the great annoyance of journeymen at work; the great loss and detriment of employers, the frequent disturbance of the peace, the collection of tumultuous assemblages, the alarm of many who were timid, and to the injury of the free and untrammelled operations of trade and commerce. To counteract these hostile measures, (which emanated from the Trades Union Societies, and the actors in which were supported in part by stipends from those societies) the master tailors in January associated for purposes of defense as a society of master tailors, and adopted a tariff of prices which was proposed to the journeymen and rejected.

The long continuance of the annoyances and interruptions to trade, ultimately brought matters to a focus, and the master tailors preferred complaints, and caused the defendants, and five others, who were the principal actors in the conspiracy to be arrested—all of whom were indicted by the Grand Jury at the Sessions, and the cause handed over to this court for trial. The acts of which they stood charged were clearly and unequivocally established by irrefutable evidence, four days being occupied in the receipt of it; and after the cause was summed up with great ability, on both sides, by Messrs. J. R. Whiting and H. M. Western for the defence, and by Messrs. N. B. Blunt and R. H. Morris for the people, Judge Edwards charged the jury yesterday evening in a clear and cogent manner, against all such lawless combina-



tions, as violations of law, destructive of the rights of employers, and others not associated, who were employed; detrimental to the public interests generally, and injurious to trade and commerce. He rested his opinion of the legal guilt of the accused, principally on the opinion delivered by Judge Savage, of the Supreme Court, in an analogous case; and also, on the revised statutes; and read a portion of the former case, as decided by the Supreme Court, on an appeal from a decision of the Court of Sessions of Ontario County, where the journeymen shoemakers had met, and ordained, that none of them should work under certain prices, established by themselves. Judge E. laid great stress upon this decision, and hoped that the Jury would not by their verdict, subvert a law which had been rendered valid, by the decision of the highest tribunal in the State.

He also quoted the following section from the Revised Statutes, vol. 2d, page 621.

"No agreement to commit a felony except a burglary, or arson, can be considered as a conspiracy, unless some object be effected by one or more of the parties having formed the agreement." This the Judge remarked was all the law necessary upon the case, and he considered the charges as laid in the indictment fully sustained by the evidence. He spoke in very strong terms against all combinations, which if suffered to go on, none could say, where they would terminate. He considered all the defendants guilty.

The Judge then gave the case to the jury, and they, after being absent about 30 minutes, returned a verdict of Guilty; but as it was the first case, they recommended the defendants to the clemency of the court.

The Counsel for the accused excepted to the Judge's

charges, and wished ten days to prepare a formal bill for his signature, which he denied.

(Judge Edwards stated that he would sentence the defendants on Monday next, and the Court was adjourned until Wednesday at 10 o'clock, when Shannon will be put upon his trial for arson.)

2. From *The New York Journal of Commerce*, May 31, 1836

COURT OF OYER AND TERMINER. Tailors' Combination Trial. Henry Faulkner, Wm. Livingston, James Noe, Alexander Hume, Peter Moss, Joshua Busey, George Smith, John Walsh, Daniel S. Gray, Thomas Keating, Thomas Renter, Howel Vane, John Bromberger, Stephen Norris, James S. Magee, Alexander Douglass, John Dillon, James Skillgi, Daniel Rose, and Thomas Douglass, were indicted for a riot and conspiracy injurious to trade and commerce.

The Court has been occupied several days with the trial of twenty-one journeymen tailors for combination. The circumstances connected with it have already so fully come before the public in the Police and other reports connected with the case, that it is not now necessary to give a detailed account of it. It will be remembered that some months back there was a strike for wages amongst a large number of journeymen Tailors in this city, and that a certain body called the Trades Union Society, who undertook to make laws and regulations for the trade, made several rules which they insisted on being observed by the master tailors, and on their refusing to comply with these rules, a number of journeymen left their employment and had recourse to threats, and promises, and various other modes to prevent journeymen tailors from working for any master tailor who did not conform to the rules,

and pay the prices laid down by this association. The charges were fully substantiated by evidence.

The Court charged the jury. It had been asserted that the individuals now on their trial could not be convicted of the offence charged against them, as they were already indicted for an assault and battery. This, however, formed no legal objection against putting them on their trial for a conspiracy. It had been decided by the Supreme Court of this State, that if an individual committed a felony, which was a higher offence than a conspiracy, then the conspiracy became merged in the felony, but where the offences committed by the individuals were all of the same grade, as in the present case, the commission of the first offence was no legal bar to his being convicted on the second; therefore, a person having committed another misdemeanor can be no bar to his being tried for a conspiracy. Relative to the law which was to govern their deliberations in the case now before them, it had been already settled by the Supreme Court of this State. The very question involved in the present case was brought before that Court, and deliberately considered and unanimously adjudicated on. The case in question came before the Supreme Court, on an appeal from the General Sessions of Ontario County. In that case, the defendants denied that the crime charged against them was one under our Statute. In the case which the Court alluded to, the defendants, with other persons, formed a combination, and conspired to prevent journeymen shoemakers working below certain prices, and made a regulation that any person who made coarse shoes for less than a certain sum per pair, should forfeit one dollar, and that they would not work for any Boss who gave less than the

price fixed on. A Mr. Lunn, however, procured a person named Pennault to make ten pair of shoes at a less price than the defendants had fixed upon, and for this reason they refused to work for him. Another count in the indictment against the defendants was, that they agreed not to work for any shoemaker who employed Pennault, and they refused to work for Mr. Lunn and made him discharge Pennault. And this conduct the Supreme Court unanimously decided was a violation of the Statute.

The offence committed by the present defendants, if an offence at all, is against the Statute, which says that if any man enter into a combination injurious to trade or commerce, that constitutes a conspiracy; but at the same time the Act says – “That no agreement, except to commit a felony on the person of another, or to commit arson or burglary, shall be deemed a conspiracy unless some act, besides such agreement, shall be done to effect the object thereof, by one or more of the parties.” If then there is a conspiracy against trade or commerce, and any act in furtherance of it, is done by one of the parties it renders them all guilty.

In criminal cases the jury were judges of the law and the facts, this was their constitutional right, but the court trusted that as a discreet jury they would pay proper respect to the opinions of the highest tribunal of the country, which had unanimously concurred as to what was the exposition of the Act, and the Supreme Court had said in a case similar to the present one, that it was a conspiracy and injurious to trade. That opinion had been read for the jury, and, in the mind of the Court was conclusive on the subject; and if it wanted exemplification let them suppose that a number



of persons engaged in the trade or manufactures of this city would from time to time enter into combinations of this sort, and determine not to work under certain rates, and carry their resolution into effect at times when their services were most necessary, what sort of a state would society be reduced to? For instance, suppose all the carpenters and bricklayers would, at the commencement of next May, determine not to work unless their wages was raised, and demanded ten times more than they ought, and could succeed in doing so, what would become of the citizens, or who would occupy their houses? Or suppose that the produce of this country bore the highest price in the foreign market, and every one was anxious to export it; and that, at that moment, all the stevedores, ship-wrights, and other mechanics, whose services were necessary to fit out ships, insisted upon having ten times the value of their services, such conduct must bring commerce to a stand, and would be well calculated to destroy the trade of the city altogether. If such a system was tolerated, the constitutional control over our affairs would pass away from the people at large, and become vested in the hands of conspirators. We should have a new system of government, and our rights be placed at the disposal of a voluntary & self-constituted association. The settled law of the state was, however, as the Court had just stated it, and it was to be hoped that the jury acting discreetly and with a due regard to the well being of society, would not now turn their back upon the Supreme Court and say that an offence was lawful, which they declared to be illegal. Before the jury came to such a conclusion let them well consider the grievous consequences which must result from their doing so. Much pains had been taken

to show that this prosecution was a spiteful proceeding between the Masters and Journeymen. This, however, was but a narrow and partial view of the subject, and not what the legislature had in view when they established a law for the community at large, and if their law could be now set at nought and rendered inoperative, the bad effects would be felt by every member of society.

If the law was as the Court stated it, the next question would be, were the defendants parties to the indictment and what was the offence charged against them. Amongst other things charged against them was, that they entered into a conspiracy, and agreed not to work for any master who did not give them certain rates which they demanded, or for any master who employed men that worked for a less rate, or for any master who employed men who were not members of their society. They also made various other rules to secure the objects they had in view, which was to place thereby both the master and journeymen tailors under the domination of a few individuals. It would be for the jury to say, whether any body of men could raise their crests in this land of law, and control others by self-organized combination. This conduct constituted a combination, but it was necessary according to the statute, that some thing more than mere agreement should be done. Before the revised statutes were passed, the combination would make the offence, but the legislature has added that, in order to consummate the offence, some act must be done by one or more of the parties, in furtherance of their agreement. And on this subject it was perfectly settled, that if a body of men conspire together, and any one of them does an act in pursuance of that conspiracy, that act is to

be visited on the whole body, and if the jury were satisfied that the defendants did make an agreement, and that any one of them did an act to carry their agreement into operation, then the offence was consummated. Such was the law, and how stood the facts.

The Court then summed up the leading facts of the case.

It was unnecessary for the Court to state more. It would be insulting the understanding of the jury to suppose they could imagine for one moment, that the prisoners had not taken measures to carry their combination into effect; and if they did form a combination and take measures to carry it into effect, and that the law was as the supreme court decided it, then the prisoners were indubitably guilty.

The combination had been of so extensive a character and created so great an excitement that it might possibly have involved some persons for whom the jury might directly or indirectly feel some interest—but the court and jury must raise themselves above all feelings of friendship or sympathy and be true to their oaths, and the well being of the public at large; and it was impossible that the acts of the defendants could escape with impunity unless the court and jury violate their duty in order to take them out of the operation of the law. The Court would again impress upon the minds of the jury that the present question was not to be considered a mere struggle between the masters and journeymen. It was one upon which the harmony of the whole community depended. Let these societies only arise from time to time and they would at last extend to every trade in this city and we should have as many governments as there were societies. There was no necessity for such societies and

in the end they might operate against the very individuals who belonged to them. Many of these journeymen might themselves become masters, and the combinations which they now formed might hereafter mar their own interests. But the law does not view it as a mere question between masters and men alone; it looks upon it as a question involving the interests of the entire community, and of every man who wants to live by the produce of his labor.

The jury retired for a short time and returned a verdict of guilty against all the defendants. Counsel for the prisoners made a motion for time to put in exceptions to the charge, but the Court stated its determination to sentence the prisoners on Monday next.

Counsel for the people, Messrs. Phenix, N. B. Blunt, and Morris. For the prisoners Messrs. Western and Whiting.

3. From the New York *Evening Post*, June 13, 1836, copied from the *Times*

COURT OF OYER AND TERMINER. *Present*—Judge Edwards, Aldermen Banks, Ingraham, Benson and Randall.

SENTENCE OF THE TAILORS. The Court room was thrown open a few minutes past eleven o'clock. A large number of persons, who had previously assembled in the passages of the hall, immediately entered, and completely filled the large room. There appeared to be no peculiar excitement however. There was no assembling in the Park as had been predicted, and the conduct of the great body of our working men on the occasion, whatever might have been their personal feelings, showed in practice, which is the only true test, that they were ready to pay obedience and bow to the



majesty of the laws. Coffin handbills, containing inflammatory appeals, had been issued, which, whatever was their object, evidently failed in their aim.

The names of the defendants were then called, viz: Henry Faulkner, William Livingston, James Noe, Alex. Hume, Peter Moss, Joshua Busey, Geo. Smith, John Welsh, David S. Gray, Thos. Keating, Thomas Renton, Howell Vail, John Bromberger, Stephen Norris, James S. M'Gee, Alex. Douglas, Jonathan Delong, James Skillen, Daniel Rose, and Thomas Douglas - 20.

On enquiring of Mr. Western, one of the counsel, that gentleman informed us that eleven of these were native born citizens; and of the other nine, five were naturalized. Of the native born, he could only call to mind Henry Faulkner, Howell Vail, Livingston, Smith, Gray, Keating, and Delong. Another gentleman stated that Busey and the Douglasses were also native born; that eleven of the twenty were born in the United States, two in Ireland, three in Scotland, and four in England.

Mr. Western moved for an arrest of judgment on three grounds. 1st, that no crime was contained in the indictment. 2d, that even if so, the crime consisted in the men endeavoring to prevent others from working, which had not been proved. And 3d, that the judge took from the jury the decision of the case, by stating what was the law and what the facts.

Mr. Western contended that this case and that decided by the Supreme Court were not analogous. He cited a case from Lord Mansfield to prove why judgment should be suspended.

Mr. Whiting also contended that the cases were not analogous. He wished judgment to be suspended, as

in the event of a sentence to incarceration, the punishment would have been enforced notwithstanding an appeal should be made to the Supreme Court, and the decision reversed.

Mr. Blunt asked if it was necessary to reply on the other side.

The Judge refused to suspend judgment. The present case he considered analogous to the one decided by Judge Savage, and more aggravated in its character. As to his charge to the jury his usual course is to say if such and such are the facts they will find accordingly, and he presumes in the present instance he followed the rule.

The Judge then proceeded to pass sentence, which was done in the following words:

You have been convicted of a conspiracy. The bill of indictment charges substantially that you and others, being journeymen tailors, did perniciously form and unite yourselves into an unlawful club or combination to injure trade, and did make certain arbitrary by-laws, rules and orders, intending to govern not only yourselves but other journeymen tailors, and persons engaged in the business of tailors, and to oppress and injure them, and to injure trade and commerce. And also to prevent any journeymen tailors from working for any tailor who would not assent to said by-laws, that the said by-laws were to the effect following, viz. That you would not work for any tailor who would employ a journeyman tailor who was not a member of the said combination, or who would refuse to keep a slate hanging up in a public part of his store or shop, on which should be entered the name of every journeyman taking a job from his store, and that no journeyman should take one out of his turn. And also that

no member of the said confederacy should go to any such shop for the purpose of getting a job, unless in his turn, under the penalty of forfeiting the price of the job. And also that no member should work for less than the bill of prices established by the club; nor for any tailor who employed a person who worked at a less price than the said bill of prices.

Also that during the period when there should be a strike, or turn out among such club, that a certain number of it should daily watch the shops of the persons against whom such strike or turn out was made, and that the person so appointed should serve, under the penalty of five dollars.

The indictment also charges, that you did, in presence of such combination, refuse to work, and did in a violent and tumultuous manner assemble together, and did go about from place to place, and to the workshops of certain tailors, with the intent to alarm and terrify them and with the intent to persuade and deter other journeymen to leave and desist from their work, and did compel divers journeymen tailors to quit their employment.

Combining to do an act injurious to trade, is declared by a statute of this State, to be a misdemeanor.

That an offence, of the description of the one with which you are charged, is one within the act, has been unanimously decided by the Superior Court of this State, and for reasons which are deemed by the Court perfectly satisfactory. That such combinations are injurious to trade, has been fully verified in this city. Various trades have from time to time been brought to a stand, and the community extensively inconvenienced and embarrassed by them. The Legislature of this State, in conformity to the established principle of

common law, in their wisdom thought it expedient that a remedy should be provided to the evil. They have, therefore, re-enacted the common law upon the subject with the additional provision, that some act shall be done to effect the object of it by one or more of the parties, in order to render it a misdemeanor.

The law leaves every individual master of his own individual acts. But it will not suffer him to encroach upon the rights of others. He may work or not, as suits his pleasure, but he shall not enter into a confederacy with a view of controlling others, and take measures to carry it into effect. The reason for the distinction is manifest. So long as individual members of the community do not resort to any acts of violence, their hostility can be guarded against. But who can withstand an extensive combination to injure him in his calling? When such cases, therefore, occur, the law extends its protecting shield.

Your case affords a striking manifestation of the necessity of the law extending its protection to the individual aimed at. The object of your combination was not only to control the merchant tailors, but even the journeymen. Your rules were craftily devised to accomplish this object, by throwing out of employment any master or journeyman who would not submit to your dictation.

But you were not content to stop here. You appointed committees to act as spies upon those whom you wished to subject to your will. Their premises were placed, day and night, under their vigilant inspection. You thronged around their shops, and were guilty of gross acts of indecorum. The journeymen who took jobs, were followed to their dwellings, and otherwise annoyed by you. In short, every ingenious device



was resorted to by this extensive combination to which you were attached, to effect your object. Your conduct became insupportable, and the individuals aggrieved have found it necessary to appeal to the laws for protection; and a jury of your country has pronounced you guilty.

Associations of this description are of recent origin in this country. Here, where the government is purely paternal, where the people are governed by laws of their own creating; where the legislature proceeds with a watchful regard to the welfare not only of the whole, but of every class of society; where the representatives even lend a listening ear to the complaints of their constituents, it has not been found necessary or proper to subject any portion of the people to the control of self-created societies. Judging from what we have witnessed within the last year, we should be led to the conclusion that the trades of the country, which contribute immeasurably to its wealth, and upon which the prosperity of a most valuable portion of the community hinges, is rapidly passing from the control of the supreme power of the state into the hands of private societies. A state of things which would be as prejudicial in its consequences to the journeymen as it is to the employers, and all who have occasion for the fruits of their labor. In this favored land of law and liberty, the road to advancement is open to all, and the journeymen may by their skill and industry, and moral worth, soon become flourishing master mechanics. Combinations, which operate to the injury of the employers or of the trade, will in the regular course of events be found injurious to journeymen. Our trades and tradesmen have heretofore flourished without any such aid. Every American knows, or ought to know,

that he has no better friend than the laws, and that he needs no artificial combination for his protection. Our experience never manifested their necessity, and I may confidently say that they were not the offspring of necessity. They are of foreign origin, and I am led to believe are mainly upheld by foreigners. If such is the fact, I would say to them, that they mistake the character of the American people, if they indulge a hope that they can accomplish their ends in that way. No matter how crafty may be their devices, nor how extensive may be their combinations, or violent may be their conduct, yet such is the energy of the law, and such the fidelity of the people to the government, that they will soon find their efforts as unavailing as the beating of frothy surges against a rock. It is a sentiment deeply engrafted in the bosom of every American, that he ought and must submit to the laws, and that to its mandates all stubborn necks must yield.

Self-created societies are unknown to the constitution and laws, and will not be permitted to rear their crest and extend their baneful influence over any portion of the community.

In fixing your punishment, we have duly considered the recommendation of the jury, for we are under an impression that you acted in ignorance of the law, and we the more incline to this opinion, as we understand that you are almost all foreigners. We have taken also your poverty into consideration. But we admonish you, and all others, that an ignorance of the law can no longer be plead; that we shall consider future offenders as bold defiers of the law, and treat them accordingly. The peace of this community shall be no longer disturbed, and the rights of individuals, and the interests of trade, sported with as they have

been, with impunity. The extensiveness of the combinations, so far from insuring impunity, will merit and will secure to the conspirators corresponding punishment.

We have had in this country so little experience of these combinations, that we are at a loss to know what degree of severity may be necessary to rid society of them. From the considerations which I have before stated, and from a hope that the explicit declarations of the law, not only by this, but by the Supreme Court, will have the effect to prevent such practices, we are disposed to impose a very mild punishment, compared to the offence. But if this is not found to answer the purpose, we shall proceed from one degree of severity until the will of the people is obeyed; until the laws are submitted to.

Henry Faulkner, who was President of the society, shall be fined \$150; Howell Vail, who made himself particularly conspicuous, \$100—all others \$50 each; and stand committed until the fine is paid.

After the announcement of the sentence, a few persons hissed, but the noise was instantly suppressed.

Mr. Blunt then announced that a *nolle prosequi* would be entered as to the other five who had been indicted, and they would be discharged.

The fines, in all, amounted to \$1150. The different individuals immediately advanced towards the Sheriff, paid their fine, and were discharged.

One remark we beg leave to make on this subject. Men must shut their eyes to events passing around them if they think it is a few foreigners or only foreigners that compose our Trades' Union. It is a low calculation when we estimate that two-thirds of the working men in this city, numbering several thousand

persons, belong to it. What cause they have for the combination, we will not pretend to discuss. It may be the highness of living – it may be – but there is no use in pursuing it. Our only object in speaking of it at all, is to show that such a union does exist, and that it is popular among the great body of our workingmen. There is an old saying, that straws show which way the wind blows. An incident occurred in the Court House on Saturday, which speaks volumes: while the men were paying their fines, one of the officers stepped up, said he had been employed for three weeks for 10s. per day, and wished to give the whole as a donation to assist the men. The feeling may be right, or it may be wrong. We do not pretend to judge. At any rate even if the Union is popular among our workmen from other climes, we have reason to believe it is countenanced and supported by the great majority of our native born.





### XIII. PHILADELPHIA PLASTERERS, 1836 COMMONWEALTH v. GRINDER

In the Recorder's Court, Philadelphia.

1. From the Philadelphia *Public Ledger*, June 27, 1836

Charge of the Hon. J. Bouvier, *recorder* of the City of Philadelphia to the Grand Inquest for the Body of the Same.

Gentlemen of the Grand Jury . . . .

Another offence which affects the public generally, or individuals, is a conspiracy. Formerly this offence was much more circumscribed than it is now. Lord Coke describes it as "a consultation or agreement between two or more to appeal or indict an innocent person falsely and maliciously, whom accordingly they cause to be indicted or appealed; and afterwards the party is acquitted by the verdict of twelve men." At the present day, however, the meaning of the offence is far more extensive, and although a plan to indict an innocent person is one of the worst kinds of conspiracy, the offence is not confined to this alone. It may perhaps now be defined to be an agreement between two or more persons to do an unlawful act, or any of those acts which become, by the combination, injurious to others.

The crime of conspiracy, according to its modern interpretation, may be of two kinds, namely, conspiracies against the public, and those against individuals. Conspiracies against individuals are such as have for their object to injure them in their persons, characters,

or property. Those against the public are, among others, such as endanger public health, violate public morals, insult public justice, destroy public peace, or affect public trade or business. I will confine myself to the consideration of the latter.

A vast number of our fellow citizens are affected in relation to their business, by combinations which are made to regulate wages and other matters incident to it. They are concerned either in the character of employer or employed, or journeymen or master workmen, all having equal rights, and all entitled to the protection of the law. Every journeyman or laborer has a right to refuse his services unless the prices at which he appreciates them, be that ever so extravagant, be paid, and no power known to the law, can force him to dispose of them for less. But while the law permits him to value his own services at his arbitrary will, and allows all who choose, to do so separately, it does not sanction the combination of two or more individuals, who unite for the purpose of obtaining those wages, and of compelling others to join them; for although the line of demarcation between those acts for the performance of which men may lawfully combine, and those which are unlawful, is not very strongly traced, still it is certain the moment the combination is formed for the purpose of controlling others, and depriving them of their just rights, or when it prejudices the public, it becomes illegal, and renders the guilty parties liable to punishment. The law then interferes, not to impose a restriction on the freedom of action, but to prevent one from being imposed by an incompetent authority; for whenever an agreement takes place among a class of men for regulating their wages, then such an agreement becomes, to the extent

to which it can be enforced, a law for the advance of wages; and a law, made by parties interested in the imposition of it, and therefore unjust. To place this matter in a strong light, turn the tables, and suppose a law, instead of an agreement, and that a statute should render it unlawful in any employer to give more than a certain price to his laborers, the effect upon this last class would be precisely the same, yet such a law would be acknowledged to be one at variance with the principles of free exertion, free use of capital, and free competition. The object of the combination is equally illegal, if it be to prevent masters from taking any apprentices, or to prevent them from taking more than a certain number. It restrains the freedom of action, and blasts individual exertions, which are the very soul of trade.

Conspiracies formed by the employers to reduce the price of wages, or otherwise coerce those in their employment to their injury and loss, are equally illegal, and will subject all who are concerned in them to criminal punishment. The reasons which have been urged to show the illegality of combinations and conspiracies of journeymen and laborers to raise their wages, apply with greater force to the employers when they illegally conspire to lower them. The employers in any branch of manufacture, compared with the operators, being few in number, an agreement among them is more easily made, and more readily enforced; and while their wealth enables them to wait the effect of their combination, the poverty of those against whom it is directed, obliges them, generally, soon to yield to the dictates of the employer, be they ever so oppressive.

In order to render the offence complete, there is no occasion that any act should be done in pursuance of



the unlawful agreement entered into between the parties, or that any one should have been defrauded or injured by it; the conspiracy, when it is unlawful, is the gist of the crime. The overt acts of one of the conspirators, in pursuance of their agreement, are considered as the acts of the whole of them; so that if two or more conspire to do an illegal act, and one of them carries the agreement into execution, the others, although not present, will be responsible for the consequences. This is one of the bitter fruits of such combinations, and it will deter a prudent man from entering into such illegal compact.

While I am upon this subject, I cannot leave it without calling, through you, upon my fellow citizens, both journeymen and employers, to pause and reflect before they place in jeopardy their peace, and the safety of society, by uniting in illegal associations. And I earnestly entreat them, by acts of justice, and moderation, and forbearance, on both sides, to arrange the difficulties which unfortunately exist among some of them. The employer ought never to lose sight of the fact, that to his journeyman he owes in part his prosperity and good fortune, and the journeymen should remember that his comfort, his happiness, and his promotion in life, depend upon the fulfilment of his duties to his employers. . . .

2. From the *National Laborer*, July 16, 1836

**TRIAL FOR CONSPIRACY!** On Tuesday last, began the trial of Isaac Grinder and Stokes Evans, who were charged with having combined, conspired, and confederated to work whenever they thought proper, and with whom they pleased. The attempt in the first clause of the charge was to the great injury and damage of one

Mr. Cowperthwaite, for whom these freemen refused to work; and in the second to the great damage and injury of one John Smith, with whom these aforesaid conspirators and confederates refused to work, and the whole in wilful, malicious, and wanton defiance of the law, and detrimental to the happiness and well being of the community. The prosecutor, John Smith, having been convinced of his folly, and fearing mightily, that instead of accomplishing (not his purpose but) the purpose of those who urged him on, he would be inflicted with the costs, abandoned the case, and not even a bench warrant could induce him to come into court to maintain his violated rights. In this dilemma, Mr. Todd, the Attorney-general of the State, unwilling to see public justice suffer, and seeing, as he said, an "immense principle" involved in the question, resolved to try the case himself, and forthwith signed his name to the indictment, and became the responsible prosecutor.

The witness was then examined, and the crime was, in the opinion of the Attorney-general, clearly proven. We did not hear the learned Attorney-general's opening speech, which we regret much, but we will give our readers the following remarks in relation to it, from the *Public Ledger*.

"Mr. Todd, in giving his views, which were vastly latitudinarian, took occasion to display one talent, in which he was certainly pre-eminent; we mean the talent of vituperation. He said that the defendants had refused to work with Smith, because he was not a member of the Trades' Union; the motives and actions of which institution he denounced and vilified, and finally aroused himself to such a pitch of indignation and imagined high resolve, that he declared, with his tall, rigid form drawn to its full height, and a lambent light

from the eyes blazing over his pathetic countenance, that he would discharge his duty, even if the Trades' Union were to 'send him threatening letters, with a coffin depicted on the margin.' The learned gentleman travelled widely from his province – deserted the case before the court, and went on a crusade, levelling his anathema against the Trades' Unions, which he said exercised 'a bold and determined tyranny.' Not content with thus disgorging his venom, the learned barrister attacked the counsel for the defence, prating, by way of contrast, of his own disinterestedness, and of the large sums they had received for their services."

David Paul Brown replied in a speech of considerable length, and with great force and eloquence; exposing the folly of the trial, and ridiculing the importance which the prosecutor had attached to it. He exhibited also the insignificance of the charge, and the want of sense and judgment manifested in the language of the indictment, which charged the defendants with having driven away (by doing nothing) Mr. Cowperthwaite's "hands." Mr. Brown dwelt principally upon the facts, and contended that there was no sufficient proof of conspiracy, and as the main part of the charge was contained in the speech of the Attorney-general, and not in the evidence, he had a good opportunity to exercise his powers, which he did in a masterly manner, and in a pleasant vein of severe irony, the effects of which, the prosecutor could not easily remove.

Charles J. Ingersoll followed Mr. Brown, and spoke particularly of the "immense principle" involved, and must have satisfied all unprejudiced minds, that whether the charge was proved or not, there was no crime in it. He illustrated his position by numerous instances, and so strengthened and fortified himself

that the Attorney-general was put to his trumps, and was content to say to the jury that the recorder would tell them the law. One illustration we remember was made by Mr. Ingersoll – which was analogous in every point to the case – of a colored woman in his employ. He said she was a faithful, honest, and industrious woman – suited his family very well, but who unfortunately had a violent temper, and the consequence was, that oftentimes the other servants had come to him and said that they would not stay in the house if he kept her, and many had left because she was retained; and would the Attorney-general, he asked, indict all these people? He spoke also of the combined proscription of the late Mr. Dallas, and of the conspiracy on the part of the members of the bar, and even of the judges, not to associate with him, and would the Attorney-general have indicted these? Many other examples he brought to show how absurdly stupid it was to construct a law to destroy lawful combinations, which must remain unanswered by the enemies of the people. He touched also upon the indictment, which, to be good, must contain some charge, and it was clear that this did not; and again, if the charge was well sustained, it must be well indicted, and it had been proved the present was not. . . .

At two o'clock, the Recorder submitted the case to the jury with a very brief charge upon the law bearing on the case, and the Court adjourned till 9 o'clock Thursday morning. At which time the jury rendered a verdict of not guilty.





XIV. COMMONWEALTH v. HUNT *et al.*,  
1840, 1842

In the Municipal Court of Boston, 1840

Reported in Thacher's *Criminal Cases*, 609.

In the Supreme Judicial Court of Massachusetts, 1842

Reported in 4 Metcalf's *Reports*, 111.

[See vol. iii, page 16.]













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